

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 CR 673 (LAK)

5 SAMUEL BANKMAN-FRIED,

6 Defendant.

Trial

7
8 New York, N.Y.
9 November 1, 2023
10 9:35 a.m.

11 Before:

12 HON. LEWIS A. KAPLAN,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

16 BY: DANIELLE R. SASSOON

NICOLAS ROOS

17 DANIELLE KUDLA

SAMUEL RAYMOND

18 THANE REHN

Assistant United States Attorneys

19 COHEN & GRESSER, LLP

Attorneys for Defendant

20 BY: MARK S. COHEN

21 CHRISTIAN R. EVERDELL

SRI K. KUEHNLENZ

22 DAVID F. LISNER

23 Also Present:

Luke Booth, FBI

24 Kristin Allain, FBI

Arjun Ahuja, USAO Paralegal Specialist

25 Grant Bianco, USAO Paralegal Specialist

1 (Trial resumed; jury not present)

2 THE COURT: I am going to have John Hammel give
3 counsel the final charge. This is redlined against the
4 circulation draft that was the subject of the charge
5 conference. There are knit-type changes in a bunch of places,
6 only two or three that are of any interest to anybody I think,
7 but you have a few minutes to flip through it, and before we
8 bring the jury, let me know if there is any further problem.

9 We have one juror stuck in traffic, hopefully will be
10 here in the next 15 minutes.

11 Pending arrival I don't think we really have anything
12 else to do, but let me know if you have a different view.

13 Any different view on what your time estimates are?

14 MR. ROOS: Same, I would say, as yesterday.

15 MR. COHEN: Yes, your Honor, the same.

16 MS. SASSOON: Same.

17 THE COURT: I'll just stay on this floor. As soon as
18 we have the full jury, we will proceed.

19 (Recess)

20 MR. ROOS: Judge, one thing I wanted to ask you was,
21 would you like me to suggest a time partway through my
22 summation for a break?

23 THE COURT: Yes.

24 MR. ROOS: OK.

25 (Jury present)

1 THE COURT: Good morning, everyone. Everyone can be
2 seated. The defendant and the jurors all are present.

3 A word to the jury about schedule. You are going to
4 hear closing argument today. We may finish them entirely today
5 or we may not. That depends on how the day goes. If we don't,
6 they will be finished tomorrow morning. In either case, you
7 will get the case tomorrow morning for decision.

8 If anyone would have a problem, should the need arise,
9 in staying beyond 4:30 tomorrow, please let me know in a note
10 this morning and what the nature of the problem is, because it
11 may become appropriate to ask you to stay late tomorrow if
12 there is no verdict. I am not suggesting there should or
13 shouldn't be. My operating assumption, which I will confirm
14 before I ask you to stay, if I ask you to stay, is that you
15 would get dinner on the government if you stayed. I don't
16 vouch for the quality, but you would be entitled to dinner.
17 And I think we might be able to provide car services if you
18 stay to a certain hour. But I'm holding myself available for
19 Thursday night if that would be helpful.

20 As for Friday, I'll keep you posted as the day goes
21 by, and indeed maybe even tomorrow.

22 We are now going to hear the closing argument on
23 behalf of the government.

24 Mr. Roos.

25 MR. ROOS: Thank you, your Honor.

1 Almost a year ago, thousands of from people from all
2 over the world who had deposited money with FTX started
3 withdrawing their funds. With each day the withdrawals grew.
4 Millions of dollars turned into hundreds of millions of
5 dollars, which turned into billions of dollars. Thousands of
6 people were trying to withdraw their investments, their
7 savings, their nest eggs for the future, but their withdrawals
8 weren't being processed. Money wasn't being returned. And as
9 those customer withdraw requests froze, they were overcome with
10 anxiety. With each additional click of the withdrawal button,
11 their dread turned to despair. Their money was gone. FTX was
12 bankrupt. Billions of dollars from thousands of people gone.

13 As the dust settled and bankruptcy proceedings began,
14 and FTX ceased to exist, a series of questions emerged. Where
15 did the money go? What happened? Who is responsible? Now
16 that you have seen all the evidence and heard all the
17 testimony, you know the answers to those questions.

18 Who was responsible? This man, Samuel Bankman-Fried.
19 What happened? He spent his customers' money and he lied to
20 them about it. Where did the money go? The money went to pay
21 for investments, to repay loans, to cover expenses, to purchase
22 property, and to make political donations. This was a pyramid
23 of deceit built by the defendant on a foundation of lies and
24 false promises, all to get money, and eventually it collapsed,
25 leaving countless victims in its wake. That's what happened.

1 That's where the money went. The defendant is responsible.

2 I am going to ask you to think about these questions
3 this morning and throughout the rest of your time, including
4 into your deliberations. Where did the money go? What
5 happened? Who is responsible? We have been at this together
6 for a little while now, for over a month, and you have heard
7 from a lot of witnesses, and you have seen a lot of documents
8 and spreadsheets on your screen, and you've been playing close
9 attention. We have seen that. This is our opportunity to walk
10 you through all the evidence. I am not going to go through
11 every document. You have seen a lot of it. But it's our
12 opportunity to talk with you about how it all fits together.

13 Let's start with a few straightforward facts that
14 aren't in serious dispute at this point. The first is that
15 there is no serious dispute that thousands of customers from
16 all over the world put billions of dollars on FTX and that the
17 exchange at least said it was holding billions of dollars of
18 customer deposits when it collapsed.

19 Second, there is no serious dispute that customers
20 believed that their deposits were theirs, for them alone to
21 use. And you remember five weeks ago now the first witness in
22 the case, Mark-Antoine Julliard, who flew here from London, he
23 told you that having his money used or borrowed by someone
24 else -- and these were his words -- was not something he signed
25 up for.

1 And it wasn't just customers. The defendant's public
2 statements, FTX's ads, FTX's policy documents and its terms of
3 service all said the same thing. And advertisements like the
4 ones we saw with Tom Brady or Larry David. FTX said it was the
5 safest and easiest way to buy cryptocurrency. And in its terms
6 of service FTX said that assets are the property of its
7 customers and do not belong to FTX. In its policies FTX said
8 that customer assets, both fiat and cryptocurrency, are
9 segregated, that customer funds do not represent the property
10 of FTX, and that customer assets are held in trust.

11 Employees and investors all testified that they
12 believed the customer deposits belonged to the customers, that
13 they could not be taken or used or borrowed, and you heard
14 about the reaction of employees when they learned that FTX
15 customer deposits were being used. Adam Yedidia quit within a
16 half hour. Can Sun resigned. So did Christian Drappi. The
17 defendant's partners in crime said the same thing. Caroline
18 Ellison, Nishad Singh, Gary Wang, their understanding was that
19 customer funds were not allowed to be used by FTX or Alameda or
20 anyone else. They believed it was wrong and illegal. It
21 didn't matter if it was a customer, an investor, a lender, an
22 employee, or a coconspirator. It was a universal view from the
23 witnesses you heard. Customer funds belong to customers and
24 could not be used.

25 Third, there is no serious dispute that around \$10

1 billion went missing. The evidence you saw, and we will talk
2 about it again, shows that there was a huge difference between
3 what FTX's system said they were supposed to have for customers
4 and what FTX actually had for customers. Billions of dollars
5 missing in cryptocurrency, billions of dollars missing from
6 bank accounts, and there is no serious dispute about that.

7 Fourth, there is no serious dispute about where the
8 missing money went. Professor Easton traced the money. The
9 missing billions went to pay for investments, stock-share
10 buybacks, real estate purchases, donations, trading expenses,
11 and loan repayments. The clear uncontradicted evidence shows
12 that the defendant was responsible for these giant investments,
13 for stock repurchases, for real estate purchases, for political
14 donations.

15 Over the last month you have heard evidence about
16 Bitcoins and Blockchains, auto-liquidation and
17 auto-deleveraging, computer code, and so-called Korean
18 accounts, about a lot of other concepts. Here is the thing.
19 This is not about complicated issues of cryptocurrency. It's
20 not about hedging. It's not about technical jargon. It's
21 about deception, it's about lies, it's about stealing, it's
22 about greed.

23 What is the dispute in this case? One of the disputes
24 is whether the defendant knew. That's what they have said.
25 The evidence that the defendant knew that he was spending FTX

1 customer money, though, I submit, is beyond dispute.

2 The core dispute in this case is whether the defendant
3 knew taking the money was wrong. That's the core question.
4 And the answer is clear. He took the money. He knew it was
5 wrong. He did it anyway. Because he thought he was smarter
6 and better and he that he could figure his way out of it, he
7 could walk his way out of it and talk his way out of it, and
8 today, with you, that ends. You have sat through this trial.
9 You have seen the evidence. And, very simply, when you apply
10 your common sense and look at the evidence, you see the
11 defendant schemed and lied to get money, which he spent, and
12 now it's gone.

13 You see over and over and over again he and his
14 company were telling customers their money would be protected,
15 and they were using it at the same time for whatever the
16 defendant wanted to use it for. And you see over and over
17 again from his own statements, from his own conduct that he
18 knew what he was doing was wrong. There is overwhelming guilt,
19 overwhelming evidence of the defendant's guilt.

20 Before we dive into the evidence, let me say something
21 about the fact that the defendant took the stand in this case.
22 He didn't have to testify in this trial. He has a right not to
23 do that, and he doesn't have a burden to put on any evidence.
24 The burden is on the government, and we embrace that burden.

25 But the defendant did take the stand, and he told a

1 story, and he lied to you. Did you notice how on Friday his
2 testimony was smooth, like it had been rehearsed a bunch of
3 times? He testified for hours about things that don't really
4 matter for the case, like what the Epsilon Beta House at MIT
5 was like, or background about Jane Street or the layout of
6 Alameda's first office in an Airbnb, or the reasons they moved
7 to Hong Kong and then left Hong Kong again, or why he picked
8 the Miami Arena as the one to brand. This was the CEO, who was
9 able to define on Friday 50 terms on direct examination and had
10 a perfect memory.

11 But let's talk about how the defendant's testimony
12 looked on cross-examination. He was a different person.
13 Suddenly on cross-examination he couldn't remember a single
14 detail about his company or what he said publicly. It was
15 uncomfortable to hear. He never said he couldn't recall during
16 his direct examination, but it happened over 140 times during
17 his cross-examination. He had to be asked and reasked. He
18 looked away. He lied about big things, and he lied about
19 little things. He asked for terms to be defined that he used
20 freely on direct examination a day earlier. He approached
21 every question like up was down and down was up, and you saw
22 how he listened to the testimony in this case. He came up with
23 a tale that was conveniently put together in a story that
24 excluded him from the fraud.

25 The story the defendant told you was that he didn't

1 know what was going on and didn't think what he was doing was
2 wrong, and that was a lie. Over three days he took the stand
3 and he lied. Because to believe the defendant's story, you
4 would have to ignore all the evidence you saw at this trial.
5 You would have to ignore the testimony of the defendant's
6 partners in crime, his deputies, Caroline Ellison, Nishad
7 Singh, Gary Wang. You would have to ignore the documents, the
8 secret spreadsheets, the flow of money. You would have to
9 ignore the financial records. You would have to ignore the
10 defendant's own statements. You'd have to ignore his lies,
11 lies that he told before FTX's bankruptcy and afterward. You
12 would have to believe that the defendant, who graduated from
13 MIT, who ran two billion-dollar companies and who was
14 testifying before Congress, was actually clueless, and he had
15 no idea what was happening at his own company, and he had no
16 idea what he was doing was wrong.

17 But you sat through this trial and you know none of
18 that is true. You don't have to wonder what the defendant
19 would say if he thought you weren't listening. You already
20 know. You know because you heard it from his coconspirators,
21 because you saw the secret documents, because you paid careful
22 attention to the evidence in this case, to the difference
23 between his public statements and his private ones, and all of
24 this shows that the defendant is guilty beyond a reasonable
25 doubt on each and every one of the charges.

1 Here is the plan for this morning. We are going to
2 talk about the evidence and focus on those questions, where did
3 the money go, what happened, who was responsible. Then I am
4 going to talk a bit about some of the defense arguments you
5 heard in this case. And, finally, I am going to talk briefly
6 about the charges.

7 Let's start with what happened. I am going to talk to
8 you about what the evidence shows happened. What does the
9 evidence show? The defendant took money, and he took
10 cryptocurrency, and he took it from FTX customers who were told
11 that their assets would be kept safe and segregated. That's
12 fraud. It's stealing, plain and simple.

13 Before there was FTX, there was Alameda. That was the
14 defendant's trading firm. You see it on the screen. He was
15 the 90 percent owner.

16 JURORS: It's not working.

17 THE COURT: Is it not on the screen?

18 MR. ROOS: How about now?

19 THE COURT: Has it come up yet.

20 JUROR: No.

21 MR. ROOS: It's here and it's in the front row they
22 have got it, just not the middle row.

23 JUROR: It just went on and went off again.

24 THE COURT: Obviously, there is a loose wire down
25 there.

1 We are going to have to take a short recess because we
2 understand there is a panel underneath the jury box, and we
3 need to get you out of the jury box to get to the panel. I
4 usually just unplug things and plug things back in.

5 (Jury not present)

6 (Recess)

7 THE COURT: Let's get the jury back.

8 (Jury present)

9 THE COURT: The record will reflect that the jurors
10 and the defendant are present.

11 Please be seated, folks.

12 Now, we have had a malfunction --

13 JUROR: They are on.

14 THE COURT: I still have a couple of things to say
15 about it, though.

16 The panel that may be the cause of the problem is in
17 the back corner of the jury box closer to the bench, we think,
18 so nobody go near that corner. We have moved alternate number
19 1 into the seat for alternate number 4, which was vacant.

20 Secondly, when it was out, was it only the second row
21 monitors that were out?

22 Folks in the second row, please look down to the first
23 row if the second row goes out again. Can we continue and have
24 you look over into the first row? Will you able to see that?

25 I am getting affirmative nods.

1 That's backup plan 1.

2 Backup plan 2 is, we are going to see whether we can
3 get a very large screen that can be hooked up later on just to
4 have a second backup if the need arises.

5 Matt, you can convey my sincere thanks for the
6 contractor responsible for whatever just went wrong.

7 I very much regret that there was that interruption,
8 but there we are. We are all tough. We are going to roll with
9 it.

10 MR. ROOS: Thank you, your Honor.

11 The defendant is Alameda. He was Alameda. He was the
12 90 percent owner. He was publicly its CEO until 2021. He was
13 the chairman and sole member of Alameda's board. And when
14 Alameda made a profit, it was the defendant who profited.

15 Now, Alameda didn't have investors. Instead, it
16 borrowed money in order to make its investments. And the way
17 Alameda had money to do cryptocurrency trading was by taking
18 out loans. Alameda was always looking for more sources of
19 capital, meaning more money.

20 Then the defendant founded FTX, a cryptocurrency
21 exchange you have heard a lot about, where customers can buy
22 and sell cryptocurrency, and FTX would earn money by just
23 taking a fee on those customers' trades.

24 Once the defendant founded FTX and started getting
25 customer money, he thought he had a new source of money to take

1 for Alameda.

2 Here is the testimony of Caroline Ellison. The
3 defendant, quote: Said that FTX would be a good source of
4 capital, and he set up the system that allowed Alameda to
5 borrow from FTX. That's from the transcript at page 654.

6 I am going to be quoting from some of the witnesses'
7 testimony this morning. So if you want to see it, write down
8 the transcript cite. It's in the bottom right corner by their
9 testimony and it's also something I'll say out loud. The same
10 goes for some of the government exhibit numbers. I am going to
11 say some of them out loud, particularly some of the most
12 important evidence, and if you want to see it, just make a
13 note.

14 The defendant tells Ellison that FTX would be a good
15 source of capital, and then he sets up a system that would
16 allow Alameda to borrow from FTX. When Ellison said, borrow
17 from FTX, what she was referring to was borrowing from FTX
18 customers using their deposits.

19 Now, the defendant set up two secret ways through
20 which Alameda could take or borrow customer money. You heard
21 about that from Caroline Ellison. You heard about it from Gary
22 Wang. You heard about it from Nishad Singh. They were each
23 the defendant's friends and his coconspirators, his partners in
24 crime. Each of these witnesses testified that they stole
25 customer money at the defendant's direction, and they described

1 the ways he told them to do it.

2 Let me just take a step back for a second. That means
3 that if you believe even one of those witnesses is telling the
4 truth about this, the defendant is guilty. I'll say that
5 again. If you believe even one of these witness' testimony,
6 Ellison, Wang, Singh, about the way customer funds were stolen
7 by the defendant, that is fraud, and you should find the
8 defendant guilty.

9 Let's talk about what each of the witnesses said about
10 the secret ways set up at the defendant's direction for taking
11 customer money.

12 Here is how Ellison described the secret ways they
13 were able to take FTX customer money: Quote, we had access to
14 an essentially unlimited line of credit on FTX, and we received
15 FTX customer funds directly into our bank accounts as part of
16 FTX's fiat deposit system.

17 This is from her testimony at page 644 of the
18 transcript.

19 By the way, an unlimited line of credit is just a way
20 of saying unlimited borrowing of customer funds. It's
21 unlimited stealing.

22 Now, there were two ways that they were able to take
23 customer money, by withdrawing it from FTX from its
24 cryptocurrency wallets in unlimited amounts, and by taking it
25 out of the bank accounts that received those customer deposits.

1 Ellison also told you who was responsible for the
2 setup, the defendant. Quote: He was the one who set up the
3 systems that allowed Alameda to take the money, and he was the
4 one who directed us to take customer money to repay our loans.
5 That's at page 645 of the transcript. And Gary Wang said the
6 same thing when he testified, that the defendant directed that
7 Alameda be given these secret special ways of taking customer
8 money.

9 Let's talk about in more detail those two secret
10 systems the defendant set up to give Alameda the ability to
11 take customer money. First, Ellison told you that one of those
12 secret ways was what we just read as an essentially unlimited
13 line of credit on FTX. What was she referring to? She was
14 referring to the way Alameda had an ability to borrow unlimited
15 amounts of money on FTX, withdraw unlimited amounts of money
16 from FTX, and run up a giant negative balance. Each of the
17 defendant's deputies described this secret system.

18 Let's talk about how unusual, how different, how risky
19 the defendant's secret setup was. Before we talk about how the
20 secret system for taking customer money worked, let's talk
21 about what borrowing was like for a typical customer, a
22 customer without those special secret privileges, like the ones
23 you heard about during this trial.

24 You heard that a major selling point of FTX was the
25 way it managed risk. It was a safe exchange. And the key to

1 that is what they called the automatic liquidation engine. The
2 defendant marketed this to his customers and to his investors
3 as a way that customers could trade safely on FTX and trust FTX
4 instead of like another cryptocurrency exchange. And customers
5 had to maintain an overall positive balance on the exchange.
6 They had to post what has been called in this case collateral
7 or security or assets to the exchange. They had to put it on
8 the exchange before they could borrow money for trading.
9 That's how it normally worked. If the customer's collateral
10 held by FTX went down in value, and the customer's overall
11 account value went down, either to zero or close to zero, then
12 under the normal system, FTX's risk system, its automatic
13 liquidation engine would kick in and it would close the
14 account. And you heard from a bunch of the witnesses about
15 this. This was the standard system. This was the way they
16 contained risk.

17 When the defendant was on the stand, he tried to make
18 this whole thing sound a lot more complicated and full of
19 exceptions and weird procedural rules. But as the CEO of FTX,
20 it was a lot simpler, and this is exactly what he told the
21 public and his customers.

22 This is his statement before Congress: FTX's
23 risk-management program requires that digital-asset collateral
24 be placed on the platform itself, rather than pledged, but not
25 delivered to the platform. So it has got to be placed, not

1 just pledged. And the reason is to ensure that the platform
2 has immediate access to the collateral for purposes of managing
3 market risks.

4 And to borrow money from the exchange, well, a
5 customer had to opt into that spot-margin system which, as I
6 mentioned, requires that they put their collateral up before
7 they borrowed. And the defendant said this was necessary for
8 customers to have prefunded collateral deposits, not simply
9 credit extensions. That was how typical customers were allowed
10 to borrow money through FTX.

11 So to take a step back, there is a system in place, a
12 standardized advertised system, a system that the defendant
13 testified about before Congress. It's straightforward. You
14 got to put your money up before you want to borrow money. The
15 reason is, so that if the value of what you are doing on the
16 exchange goes down, there is security for them to take to make
17 sure you don't create a massive hole. It was a system that was
18 subject to rules, with limits on borrowing, with requirements
19 where the collateral be kept.

20 This wasn't a secret. This was in the defendant's
21 public testimony and public statements; secretly, though,
22 secretly the defendant gave Alameda a different way of
23 borrowing customer money, a system that only existed for
24 Alameda, that wasn't subject to the same rules as other
25 customers, that wasn't subject to the same limitations,

1 designed to keep customers' money safe and reduce risk.

2 These secret rules, as you know, as you learned,
3 allowed Alameda to borrow billions of dollars without
4 collateral on the exchange, to rack up multimillion dollar,
5 billion dollar negative account balances without any risk of
6 being shut down, to being liquidated through FTX's risk system,
7 the very same system that the defendant was publicly saying
8 would keep customer money safe.

9 Let me pause here for a minute again. The company
10 that the defendant had publicly said was completely separate
11 and free from conflicts of interest was secretly able to take
12 billions out the back door of FTX, and the defendant knew it.
13 And the way you know he knew it is because he set up a system,
14 a public system for everyone and a secret system just for
15 Alameda. We are going to talk more about that. And he
16 directed others to make it work that way.

17 The defendant directed Gary Wang and Nishad Singh to
18 program the secret way of taking customer money right into
19 FTX's computer code. Starting with the computer code, you
20 heard from Wang that at the defendant's direction a feature was
21 added to the code that permitted accounts to go negative, and
22 the naming was not very creative. It was called Allow
23 Negative. And the defendant had it turned on for just one
24 customer's account, Alameda.

25 Here is the code history that shows the code -- the

1 allow-negative code was added for just one customer's accounts,
2 Alameda. Here is Alameda's account on FTX. This is the
3 database information. And you can see this allow-negative
4 feature far in the right side, in the red box, was turned on.

5 Now, Wang testified that this feature was added to
6 Alameda's account at the defendant's direction. While there
7 were originally some potentially sensible reasons for some of
8 the code editions, Wang saw that very quickly the defendant
9 started using this feature right here. This is, by the way,
10 Government Exhibit 644. He started using it to allow Alameda
11 to borrow more money than it had.

12 And to ensure that Alameda was able to withdraw
13 essentially limitless amounts of money, the defendant also had
14 Wang give Alameda a gigantic line of credit. This is that same
15 exhibit again, Government Exhibit 644. This is the screenshot
16 of the code and it's just in black and white right there, a \$65
17 billion line of credit right on Alameda's account. Wang told
18 you the defendant directed him to set up Alameda's line of
19 credit this high so they can make unlimited withdrawals.

20 Here is that testimony. Quote: Sam asked us to take
21 it to -- Sam asked us to take it to a large number. I took it
22 up to a billion dollars and then the issue happened again. The
23 issue he's talking about is where Alameda exhausted its line of
24 credit. And then he asked me to take it up even farther, and I
25 told him I'm taking it up to 65 billion. He said he is fine

1 with that, and I did that.

2 As a result of Alameda's ability to go negative and
3 its \$65 billion line of credit, it was able to run up this
4 massive negative balance, billions of dollars. When I'm
5 talking about a negative balance, I'm talking about an account
6 that's in the red. It has got a negative sign in front of it,
7 which means it's in a deficit, it's in a hole, and Alameda was
8 in a multibillion dollar hole.

9 This presented really a massive, totally undisclosed
10 risk to FTX's customers. They were told that their assets
11 would be safe. They were told that if a customer's account
12 would go negative, the way they would be kept safe is by having
13 that customer's account liquidated or shut down.

14 And what they didn't know, what you all know but they
15 didn't know and what the defendant hid from them, is that
16 Alameda had this multibillion dollar negative balance in its
17 account. And Wang testified that that -- it was these special
18 features that allowed and caused Alameda to have such a large
19 hole at FTX, and Singh said the same thing.

20 Now what the defendant does -- actually, let me put it
21 this way. What the testimony from these witnesses tells you
22 about the defendant, about the core issue in dispute, is, it
23 tells you the defendant gave special secret privileges to
24 Alameda, knowing it would be allowed to take, to steal customer
25 money. It shows that he knew it was wrong to take money and

1 the way -- and this is critical -- the way you know that it
2 shows he knew it was wrong to take customer money is, if he
3 thought this was legit to just have a giant line of credit and
4 this allow negative feature and borrow from other customers,
5 why was it so secret? Why not just say, hey, Alameda, by the
6 way, has a \$65 billion line of credit? The reason it is secret
7 is because he knows it's wrong. Now because of these secret
8 features Alameda was not subject to the same rules as other
9 customers. And while there were limits on how other customers
10 could borrow, there were no limits on Alameda's borrowing. Let
11 me talk about one of those limits on other customers.

12 Other customers were not allowed to withdraw funds
13 advanced from a line of credit. Here is a customer contract
14 prohibiting it. That restriction, though, as you heard, did
15 not apply to Alameda's borrowing. So while other customers had
16 to have collateral on the exchange, while other customers could
17 not withdraw their lines of credit, it says it right in this
18 contract, Government Exhibit 69, that rule did not apply to
19 Alameda.

20 As a result of these special features, Alameda ran up
21 a huge negative balance on FTX. This is Government Exhibit
22 1002. This is Alameda's borrowing through its accounts that
23 were allowed to go negative. So this exhibit shows what
24 happened in the major cryptocurrencies in those accounts that
25 had that special allow-negative box checked. The box that we

1 saw in Government Exhibit 644, it's these accounts, and that's
2 what happened. They went as low as negative \$12 billion.

3 By the way, here is another reason why Government
4 Exhibit 644 is critical. This wasn't typical borrowing, right.
5 We have talked about the spot-margin program. And notice
6 Alameda's main account. It didn't even have spot margin
7 enabled. Why that's important is, it was not participating in
8 the program where typical customers had to opt in and post
9 collateral. It was borrowing the defendant's way, through the
10 special advantages. It was borrowing through the \$65 billion
11 line of credit, not through the spot-margin program.

12 As I said, when we are talking about borrowing here, I
13 just want to be clear, Alameda is taking money off the
14 exchange. Unlike a typical customer, who was doing borrowing
15 to trade on FTX, Alameda was just taking the borrowed customer
16 money off of FTX for its own purposes, to cover expenses or to
17 pay for investments.

18 And Professor Easton gave you some examples. Here is
19 one. This is Government Exhibit 1017A and 1017B. And we saw
20 some of these exhibits for each of the lenders. It goes 1017A
21 through -- I think it's H. There is one for each lender. And
22 what each of them shows is that Alameda's special secret
23 borrowing was used to take customer money to repay Alameda's
24 third-party lenders. This is Government Exhibit 1024.
25 Alameda's special secret borrowing was used to take customer

1 money to buy back FTX's stock.

2 This is something -- I am not going to go into the
3 details now, because we are going to talk about this further in
4 a bit, but this is another example of using -- again, you can
5 see it at the bottom -- that allow-negative account to borrow a
6 billion dollars to buy back stock.

7 Alameda had one more secret exception that made
8 everything even riskier. It was exempt from the liquidation
9 system. A liquidation system in some ways is like the giant
10 parachute. It's what -- if an account is getting to a risky
11 position and is about to go bankrupt, liquidation is what stops
12 that process and what stops that risk from turning into some
13 big hole. It closes out the account. But Alameda was exempt.
14 It was not part of that liquidation system. And what that
15 meant is, it would not be shut down. Its account would never
16 be closed, no matter how negative it got, no matter how risky
17 it became.

18 Here is the proof. This is, again, another piece of
19 the computer code that exempted Alameda from being liquidated.
20 It was added by Gary Wang in 2020, and he testified that
21 defendant directed him to do it.

22 Keep in mind this date that's on this exhibit. This
23 is important. 611 is the number. Because on cross-examination
24 the defendant admitted to this. This was a stunning moment, I
25 thought, of cross-examination because here is what he admitted.

1 The question was: In 2020, isn't it true that you
2 directed Gary and Nishad to change the rules in the code so
3 that the auto liquidation rules that applied to other customers
4 on the exchange would not apply the same way to Alameda? That
5 was the question that was asked of him on page 2659 of the
6 transcript. Here is his answer: I suggested that they make
7 some alteration to it. And he was asked a follow-up. For that
8 purpose, correct? And he said yup.

9 So by 2020, here is the question. So by 2020, you
10 knew that Alameda had distinct rules for liquidation. That was
11 the final question here. And what was his answer? Yeah. 2659
12 of the transcript. On cross-examination he admitted to knowing
13 about that code change. He admitted to knowing that Alameda
14 had distinct rules for liquidation. That's a concession that
15 he knows that Alameda was exempt from the rules that applied to
16 all the other customers.

17 What was the result of Alameda's secret exemption and
18 privileges on FTX? You know. The defendant took billions of
19 dollars in customer funds, leaving an enormous gap between what
20 FTX said it had in customer money and what it actually had in
21 cryptocurrency wallets.

22 (Continued on next page)

23

24

25

1 MR. ROOS: And this is important. This is covered in
2 Government Exhibit 1051, which we'll see in a bit, but it
3 proves that FTX didn't have anywhere close to the amount of
4 money to cover customer deposits, because of these secret
5 privileges.

6 Now the defendant took the stand and denied that he
7 knew everything about these special features, like that the
8 total size of the line of credit was 65 billion, and he denied
9 that he was told about some of the code features, but he
10 admitted to you that he was the one who directed Gary and
11 Nishad to change the code to prevent Alameda from being
12 liquidated if its overall account was negative; and he admitted
13 to you that he was the one who told Gary and Nishad to increase
14 Alameda's line of credit. He even admitted that he knew
15 Alameda was using a line of credit to borrow billions of
16 dollars.

17 Let's talk about what that means. Knowing that
18 Alameda was using its unusually large line of credit to take
19 money from FTX, that means that the defendant knows, he knew
20 that Alameda was taking money from FTX customers. He was
21 taking money from FTX customers when he was saying something
22 totally different publicly, when he was lying publicly, and
23 that makes him guilty of fraud.

24 Now he told you he never queried the FTX or AWS
25 database, or looked at the code. Not only is that farfetched

1 and completely not believable that as the CEO, he was
2 unfamiliar with the computer code that ran the website and the
3 database that had all the transactions for the website, it's
4 also irrelevant. He told his deputies to exempt Alameda from
5 the rules that applied to other customers, to increase
6 borrowing limits, and that's fraud. It's stealing.

7 You also know that the defendant was deeply familiar
8 with these special features and how they were used to take
9 customer funds because of the documents in this case.

10 This is Government Exhibit 5. It's an excerpt. This
11 is a spreadsheet created by the defendant. It's important. He
12 admitted during his cross-examination—and he had to, because
13 of this Google metadata. You remember the brief witness from
14 Google who introduced metadata evidence for certain documents.
15 Metadata evidence is like the data information about when
16 documents were created or saved or viewed. And the Google
17 metadata shows that the defendant was the sole creator of this
18 spreadsheet, Government Exhibit 5, and that he made it in early
19 September 2022. And in this spreadsheet it lists out all of
20 the lines of credit. You can see them.

21 Now that's important, because look at these numbers
22 that are on here, and the email addresses. This is not the
23 type of thing you can memorize, right? It's not the type of
24 thing where you're like, I'm going to—I'm going to commit to
25 memory, 65,365,999,994. And then do that for a thousand

1 different lines of credit. The way he has this is because it's
2 coming from the database. And right there is Alameda's line of
3 credit. And that also shows you that he wasn't telling the
4 truth when he said he couldn't see any of these things.

5 By the way, did you notice how the exact same number
6 that's on the defendant's spreadsheet, Government Exhibit 5,
7 also is the exact same number in the screenshot that we've
8 looked at, Government Exhibit 644? But again, it shows you,
9 he's able to view these things.

10 What the defendant's spreadsheet also shows—again,
11 this is Government Exhibit 5—is that he knew Alameda's balance
12 sheet was in terrible shape without the money he had stolen,
13 without the secret \$65 billion line of credit from FTX. The
14 number here that's key is the net. That shows how much money
15 Alameda had without its line of credit. And negative 5 billion
16 right here, that number at the bottom, is actually sugarcoating
17 the situation, because without the FTT—which are those coins
18 that the defendant created for his company, which couldn't
19 actually be turned into cash—the balance of Alameda's main
20 account, he knew, was negative 10 billion. So the defendant
21 plainly knew that because of Alameda's giant line of credit, it
22 was able to and did borrow billions. Those billions came from
23 FTX customers.

24 The defendant mentioned a few times when he testified
25 that FTX made a billion dollars in revenue, before expenses.

1 When Alameda was borrowing billions, it was right off the FTX
2 platform, and it was borrowing 10 billion or so, 5 billion,
3 10 billion. Simple math tells you it's coming from customers.
4 1 billion revenue, 5 billion borrowing. Like whose money do
5 you think you're taking? Right? It's—if you are—if there's
6 only 1, at most, 1 billion to take and you're borrowing 10,
7 that means it's coming from the other people who have put the
8 money on the platform. That's not your money; that's customer
9 money. This alone makes the defendant guilty of fraud.

10 Now compare what the defendant told FTX customers to
11 what was actually happening. The defendant told customers that
12 his exchange operated one way that was trustworthy, that it had
13 the liquidation engine, that it kept customer money safe, that
14 it kept—and then simultaneously, he had this hidden, massive
15 exception to that rule that put everyone's money at risk, and
16 allowed him to steal customer money.

17 You heard a lot about the fiat liability and the use
18 of customer fiat deposits. We're going to talk about that.
19 But keep this in mind. If you conclude that the defendant
20 stole customer money using these code features that I've just
21 described, you can and you should find him guilty on that basis
22 alone. It doesn't matter what happens with those fiat deposits
23 because he's just ripping money right off the FTX exchange.

24 But that wasn't all. You did hear the evidence about
25 the fiat deposits, and this is a reason also, all by itself, to

1 find the defendant guilty of fraud. He had customers send
2 their bank deposits, their money, fiat deposits, directly into
3 Alameda's bank accounts, and then he spent it. Here's how
4 Ellison described it.

5 "We received FTX customer funds directly into our bank
6 accounts as part of the FTX fiat deposit system."

7 Ellison explained to you that long before she was
8 Alameda's CEO, the defendant set up a system to receive FTX
9 customer deposits into bank accounts that belonged to Alameda,
10 and a lot of those deposits came through this entity that we've
11 heard some about called North Dimension. The defendant was
12 involved in opening that account. He signed the application.
13 That is his name right there, as the principal officer. This
14 is Government Exhibit 1348. So he knew.

15 Once FTX customers' deposits landed in Alameda's bank
16 accounts, they were used as a source of free cash. This is
17 Government Exhibit 1050. In some ways, the picture here just
18 tells you everything, right? Professor Easton traced the
19 money. Rather than holding the customers' money in custody, it
20 was moved all around, commingled, mixed, spent, transferred
21 from one account that received customer money for customers to
22 operating accounts, to FTX accounts, to out the door to all
23 sorts of expenditures, to the defendant's own company called
24 Paper Bird. And that's because, as Ellison told you, the
25 defendant said they could use the money to fund Alameda.

1 There was a sort of—there was this funny part of the
2 cross-examination yesterday that stuck with me, which was a
3 point when my colleague was asking the defendant: So who moved
4 the money if it wasn't you? Like, who thought they could do
5 this? And we went through this list of names, and it was these
6 low-level people. And so the theory here is that somehow the
7 lowest levels of people, I guess, just moved and took
8 \$8 billion. That's not credible, right? That doesn't make
9 sense. That doesn't line up with the evidence. The evidence
10 shows—that we're about to go through—it was the defendant,
11 right? And that makes sense. He owned it, he was the boss, he
12 set up the system, he was FTX's CEO, he was Alameda's CEO when
13 this got started, he was the sole chairman of the board. He's
14 the reason why the money is moving in crazy directions like
15 this.

16 And how did they use those fiat deposits that came
17 into Alameda's bank accounts? Here's an example. They used it
18 on—a hundred million dollars in real estate in the Bahamas,
19 they used it on investments like buying Robinhood shares. And
20 what was the result? The result was billions of dollars that
21 Alameda spent and owed back to FTX customers.

22 This chart, Government Exhibit 1004, tells the story.
23 The black line, FTX's systems said there were over 10 billion
24 in fiat deposits with Alameda. But in reality, it was the
25 green line, and that's because the defendant and his

1 co-conspirators spent the money, and that's why there's this
2 giant gap in the middle, hole.

3 I want to be clear about something. Nothing about how
4 FTX customer fiat deposits were taken or borrowed resembled
5 anything close to the system that the defendant had put in
6 place that permitted typical customers to borrow money from
7 FTX. This was not margined borrowing, right? It wasn't even
8 through the system. The defendant admitted that yesterday. He
9 was asked questions: Was this margin trading? Was this margin
10 trading? There was no collateral posted here. This wasn't
11 even Alameda's special secret line of credit. This was all off
12 the exchange, off the books. And during cross-examination,
13 when the defendant was asked whether he could name any other
14 customer that accepted FTX customer deposits besides Alameda,
15 he couldn't name a single one. Alameda was exceptional in that
16 regard, and the way it was exceptional is that it was allowed
17 to take these deposits and use them, because, as Ellison said,
18 there was an additional source of capital for the defendant's
19 agenda. Common sense tells you it was the defendant who set up
20 these systems.

21 Let's think about the other options. It couldn't have
22 been Ellison alone. She never worked at FTX. She didn't have
23 any way to give Alameda the special ability to withdraw money
24 from FTX, right? She didn't have the access to go into the
25 computer code. And because she didn't work at FTX, she also

1 didn't have the ability to set the wiring instructions to send
2 the customer deposits to Alameda. And of course when this
3 whole system was set up, the defendant is the one who was both
4 the CEO of FTX and of Alameda. Caroline was just a trader. So
5 it can't be her alone.

6 And then on the other hand, you've got Gary Wang and
7 Nishad Singh, and they could not have acted alone without the
8 defendant. They worked at FTX, but they didn't have any role
9 at Alameda. Wang was a minor owner but had no real role in the
10 business. He had no involvement in the spending. He was
11 sometimes given documents to sign, but as he testified on
12 direct examination, cross-examination, and redirect, he didn't
13 even know what the documents were for. And Singh didn't even
14 ever work at Alameda. He had no role with the company. So it
15 couldn't have been them alone. They didn't have access to the
16 money to spend it.

17 Now the defendant, he lied to you when he pretended he
18 didn't know Alameda was spending the customer fiat deposits.
19 He told you that he was the CEO of Alameda when this started
20 and never gave a single employee any guidance on safeguarding
21 or segregating FTX customer fiat deposits. And four
22 witnesses—Adam Yedidia, Caroline Ellison, Gary Wang, and
23 Nishad Singh—all told you that in June of 2022, they discussed
24 with the defendant that Alameda's liability to FTX for spending
25 FTX customer fiat deposits was 8 billion. But the defendant,

1 he claims that he just had no idea about this fiat deposit,
2 just had no idea about the liability, no idea about the
3 accounting structure that was then in place, until September,
4 or was it October, or was it the end of October? That's just
5 simply not remotely credible.

6 The truth is that there was just one person who had a
7 motive to set up the system to give Alameda the secret special
8 ability to borrow money from FTX customers. Who had control?
9 These are the questions. Who had control of FTX in order to
10 give Alameda secret access to customer money? And who had
11 control at Alameda to spend that money? There's one
12 person—the defendant. He set up a system; he directed a
13 system where Alameda could borrow unlimited amounts of money,
14 without any limits, without a requirement that the collateral
15 be on the platform, without any restrictions on withdrawing the
16 money, and without any chance of liquidation; and he set up
17 another system where Alameda would receive customer fiat
18 deposits directly and it could use that money without any
19 restrictions.

20 And just to take a step back about thinking about what
21 the alternative explanation is, so somehow, two different sets
22 of people—because there's no other overlap—two different sets
23 of people come up with two different systems that both happen
24 to give the defendant's company secret access to money. That's
25 got to be the alternative explanation. And you know that's not

1 credible. The defendant knew what he was doing was wrong. He
2 tried to tell you he thought this was actually permissible to
3 use the fiat deposits, but his testimony flew in the face of
4 what every customer who testified says they thought how their
5 money was treated. And you know that because of the things he
6 said publicly that were totally inconsistent with what he was
7 doing in secret.

8 So one of the ways you know he was lying, one of the
9 ways you know he knew what he was doing was wrong, was while
10 the defendant was secretly giving access to FTX customers and
11 spending it, he was saying something totally different to the
12 customers, to the investors, to the public, and to the United
13 States Congress. He was lying to the public, and he told those
14 same lies on the witness stand.

15 Let's start with the advertisements. He ran ads
16 saying FTX was safe. "The safest and easiest way to buy and
17 sell cryptocurrency." He told Congress and the public that by
18 "logging in to the customer's account at FTX, the customer can
19 immediately view the types of assets they own, held in custody
20 by FTX." And that last part is critical. He said, they can
21 view the "assets they own, held in custody by FTX." And that
22 wasn't true. When customers logged in to their accounts, they
23 saw a balance. Behind the scenes, the money wasn't there.
24 That in and of itself is a lie. A customer logs in—the first
25 customer witness we saw in this case logged in and saw a number

1 that represented his balance, and that wasn't real. That was
2 false. And that was a lie. It had been taken off the
3 exchange.

4 And here's the proof of that. This is the chart I was
5 talking about earlier. There was a huge deficit, a huge hole
6 on the exchange. This is Government Exhibit 1051. And it
7 shows you what customers thought they had. That's the black
8 line, right? This is what customer balances were on the
9 exchange. But what they actually had was the yellow line.
10 What was actually there was something totally different.
11 Billions of dollars different. And the difference between the
12 black line and the yellow line is the hole. And this proves
13 that the defendant was lying publicly because he was saying one
14 thing—that we held the assets that you own in custody—when in
15 fact something totally different was going on.

16 Now the defendant had said he wasn't aware of some of
17 the stuff that was going on, and he lied when he said that. He
18 said something like, *it was messy accounting and that was on my*
19 *list of priorities*. So, I mean, give me a break. That's a
20 lie. If that was true, that they had messy accounting, like he
21 claimed, then why did he tell Congress that "FTX regularly
22 reconciles customer trading balances against cash and digital
23 assets held by FTX"? Regularly reconciling means comparing.
24 Regularly reconciling trading balances against cash and assets
25 held would have told the defendant, did tell the defendant,

1 that there was a huge, significant hole, right?

2 Go back an exhibit.

3 If the defendant is regularly reconciling
4 balances—that's the black line—against, as he said, what
5 money they had—the yellow line—he knows that there was a huge
6 gap. He knows that. And when he's saying everything is fine,
7 after saying, *we regularly reconcile*, he's lying. And that
8 tells you that he knows what he's doing is wrong.

9 Now yesterday morning on redirect, the defendant came
10 out and he said that he thought it was okay for Alameda to use
11 customer fiat deposits, and that's a claim that not a single
12 witness besides the defendant has made in this case, right?
13 Universally, they've said this was a bright red line. You
14 cannot touch that money. No one thought it was okay. And the
15 truth was that the defendant, he knew that Alameda was not
16 allowed to use that money, and again, the way you know it is
17 because he said something totally different to Congress.
18 Twice, the defendant told Congress that when an intermediary
19 like Alameda receives customer assets, they must ensure there
20 was "no delay in returning customer funds upon request, and no
21 shortfall where an amount lesser than the value of that
22 customer's assets can be returned." And he told Congress that
23 to ensure that happens, it's important that there be "a
24 restriction on the custodian"—so that's Alameda—"a
25 restriction on the custodian, including, for example, a

1 restriction on the use of customer assets to finance other
2 business expenses and initiatives." Think about that last part
3 of his testimony here. He's saying the third party, the
4 intermediary that receives the money, there must be a
5 restriction on it on using customer assets to finance other
6 business expenses and initiatives. And if you're thinking,
7 well, that sounds familiar, that's because the defendant did
8 exactly the opposite. He used customer assets to finance other
9 business expenses and initiatives. But privately, in secret,
10 you know he knew exactly what was going on and he knew it was
11 wrong.

12 We've talked a lot about all the special advantages
13 and secret privileges that Alameda had. The defendant knew how
14 wrong and unfair these privileges were to every other customer
15 on the exchange, how these privileges flew in the face of
16 everything he said about trust and safety on the exchange. So
17 he lied about it, to cover it up.

18 And what was the defendant saying about the
19 relationship between FTX and Alameda? Throughout his time at
20 FTX, the defendant was saying things publicly like, Alameda is
21 treated just like everyone else. He tweeted that. "Alameda is
22 a liquidity provider on FTX but their account is just like
23 everyone else's." He was quoted in articles as saying that
24 Alameda is a wholly separate entity. And he told CNBC that he
25 "worked to eliminate conflicts of interest," and that he

1 doesn't run Alameda anymore, and that Alameda is a "neutral
2 piece of market infrastructure." Those were lies. Privately,
3 the defendant knew that Alameda had all sorts of special
4 privileges and features on FTX. It wasn't wholly separate, it
5 wasn't just a piece of neutral market infrastructure, its
6 account was not like everyone else's. Unlike any other
7 customer, Alameda had the \$65 billion line of credit. It was
8 able to do unlimited amounts of withdrawals, make unlimited
9 amounts of borrowing, have its account go negative, not post
10 any collateral, not be liquidated, not be shut down. Its
11 borrowing wasn't just through the spot margin program. Much of
12 it wasn't even on FTX. If customers knew that the defendant
13 had directed these special privileges for its own affiliated
14 company, they would have run for the exits. It would have been
15 clear as day that their money wasn't safe, that the defendant
16 was treating their deposits as his personal piggy bank by
17 funneling that money to Alameda. And so the reason he made
18 these public statements is to conceal what he was doing,
19 because he knew what he was doing was wrong.

20 You know these were deliberate lies. He told
21 customers that backstopping customer assets was primary within
22 weeks of using customer money to repay his debts. He told
23 reporters that Alameda was totally separate in September, when
24 he was internally freaking out about the close relationship
25 between FTX and Alameda. And at the same time, in September

1 2022, when he wrote this spreadsheet, Government
2 Exhibit 5—this is the spreadsheet we were looking at a little
3 bit ago, where the defendant listed out all of the lines of
4 credit and listed out Alameda's line of credit as 65 billion,
5 and the next closest as 150 million—this is the same time he
6 made those statements to Bloomberg and to CNBC; the same time
7 he said, they're totally separate, treated like everyone else,
8 neutral market infrastructure.

9 And you saw an example of a line of credit agreement
10 that VIP other customers used. And those customers had to sign
11 these documents, and there was of course a limit on how much
12 they could borrow. And it was only as much as their line of
13 credit. And they were prohibited from withdrawing it. So no
14 other customer had a setup like Alameda. And as Alameda was
15 using this line of credit to spend billions on loan repayments,
16 on investments, and on expenses, it had nothing to do with
17 their trading at FTX.

18 So from this, here are the key points: (1) Alameda
19 had a special feature, a secret advantage over other customers,
20 and it certainly was not treated like other customers; and (2)
21 the defendant knew about it at the same time he was making
22 public statements.

23 So you sat through this trial, obviously, and you've
24 seen a lot of examples of the defendant saying something
25 publicly different than what he was doing in secret. And what

1 does this say about his intent? Right? Because that's one of
2 the key questions. To view FTX as safe, secure, custodian of
3 their money, that's what he was projecting publicly. He wanted
4 it to be viewed as a trustee. These public lies also, though,
5 show his criminal intent. The fact that he was saying things
6 publicly that were different than what he was doing privately
7 shows he knew what was going on behind the scenes wasn't okay.

8 So next I want to talk about some of the details of
9 where the money went and who was responsible. But before I do
10 that, let me ask your Honor if you want to take a break right
11 now or later.

12 THE COURT: Sure. Fifteen minutes.

13 (Recess)

14 (In open court; jury not present)

15 THE COURT: I take it there were no issues with the
16 changes in the charge overnight, correct? Mr. Cohen?

17 MR. COHEN: No, your Honor.

18 THE COURT: Mr. Rehn.

19 MR. REHN: That's correct, your Honor.

20 THE COURT: Okay. Let's get the jury.

21 Mr. Roos, time estimate?

22 MR. ROOS: I think I'm about a third of the way
23 through, but in terms of time, I've now lost track of time with
24 our various—

25 THE COURT: I suspect you have company. Okay.

(Jury present)

THE COURT: Okay. The defendant and the jurors all are present.

You may continue, Mr. Roos.

MR. ROOS: Thank you, your Honor.

So the defendant directed that these systems be put in place that allowed him to take FTX customer money, and then once the systems were in place, there were points in time, points along the road, where the defendant was presented with a choice—come clean or double down. And every time he chose to double down, to take more criminal steps to dig the hole in customer deposits deeper.

And so what we're going to do now is I'm going to talk about six moments in time. And here are the first three. But six moments in time in 2021 and 2022 where the defendant was presented with a choice about coming clean or doubling down and digging the hole deeper. And each time, he indisputably knew the financial situation at FTX and Alameda, and he knew that he would be spending customer money, and each of these times, he took the path of doing the wrong thing, he took the criminal path, and so that's what we're going to talk about.

And No. 1, the first reason is the defendant's purchase, his buying back of stock from Binance using customer money in 2021.

So starting in the middle of 2019, back when FTX was

1 started, the defendant sold some of FTX's stock to a company
2 called Binance, which was run by this guy on the left. And
3 fast forward two years later, FTX and Binance, according to the
4 defendant, are rivals, and the defendant hated the fact that
5 his rival owned part of FTX, so in 2021, the defendant wanted
6 to buy out Binance. And buying out Binance or buying back
7 Binance's ownership of FTX stock was expensive. Binance had
8 about \$2 billion worth of FTX's stock. And so remember what
9 the defendant said about how much money in revenue they were
10 making at this point—about a billion dollars. That's only
11 half of the \$2 billion that he needs to buy back FTX's stock
12 from Binance. They didn't have enough money to do it. But the
13 defendant kept telling Caroline Ellison it was really important
14 to him to buy back Binance's stock.

15 He said—and this is testimony. He said to her, and
16 this is what she said to him: "We don't really have the money
17 for this, we'll have to borrow from FTX to do it." And he said
18 this in response: "That's okay, I think this is really
19 important, we have to get it done."

20 Let me say it again. This is from page—by the way,
21 this is from page 668 of the transcript. She says, "we don't
22 have the money, we have to borrow it." And what she's talking
23 about is taking it from FTX customers. And he says, "that's
24 okay, we have to get it done." It doesn't matter how much he
25 wants to do it; if they're talking about money from customers,

1 it's clear as day the defendant knows that they're stealing and
2 committing fraud. And that's exactly what they do.

3 This is Government Exhibit 1024. To pay the
4 \$2 billion to buy back the stock shares, they used the billion
5 dollars they had and then a billion dollars of customer money
6 from FTX. And this came out of that main Alameda account with
7 the "Allow Negative" turned on and the \$65 billion line of
8 credit. This has nothing to do with the members of the
9 settlement team that he was saying were in charge of spending
10 fiat deposits. This wasn't margin trading. This was just
11 taking money straight out of an account with a negative balance
12 that had a special privilege so that he could pay the nearly
13 \$2 billion he needed.

14 And notice what the defendant said and what he didn't
15 say when he testified about this. He admitted that there was a
16 stock buyback, and he admitted the amount of money he used, but
17 he was totally silent about the specifics. He didn't say
18 anything about the conversation with Caroline Ellison, and
19 that's because it was bad for him. Bad for him because they
20 were using FTX customer money. Way back in 2021—and this is
21 important. The timing here is important. Way back in 2021,
22 well before there was market turmoil that caused problems, way
23 before all the events the defendant testified in 2022, when he
24 bought back these shares, they didn't have those issues. So
25 when he was asked about the buying back of the shares, the

1 defendant gave a vague answer. And remember what his answer
2 was? It was, he didn't know exactly which entity bought back
3 the shares. And he didn't want to say who bought back the
4 shares, and the reason he was vague and didn't give a straight
5 answer when he testified is because the truth on this one is
6 particularly inconvenient for the defendant.

7 And this is the critical document. This is Government
8 Exhibit 317. It's an email, and it's from the defendant, okay?
9 And it's him saying transfer the money to buy back these
10 Binance shares. And let me just point out something about
11 who's on this email. No one from Alameda, right? They're not
12 even copied. It's the defendant who's leading this effort.
13 And that tells you everything you need to know about this.
14 He's the one, and he knew exactly where the money was coming
15 from. It wasn't like there were settlement people who were
16 doing this process. It was him. He took about a billion
17 dollars of customer money, without his customers knowing, and
18 when FTX did not have all the money it needed to do this
19 buyout. This wasn't something that he needed to do to make the
20 exchange run, this wasn't the result of bad luck, this wasn't
21 the result of, you know, some hedging gone wrong. This was a
22 deliberate decision. This was him spending money that he
23 wanted to spend. And remember why he did it. He said this was
24 "really important to me." He was confronted with the question
25 by Ellison, we have to spend customer money, and he said,

1 "that's okay, this is really important to me." So that's how
2 you know the defendant knowingly took FTX customer money and
3 intentionally committed fraud. He knew this wasn't permitted
4 borrowing, because it was not a way that was allowed on FTX.
5 He did it because it was really important to him, because he
6 really cared about this rivalry. And when he was given the
7 choice of not buying the stock back that they couldn't afford
8 or digging a deeper hole by taking more customer money, what
9 did he do? He decided to double down, to take more customer
10 money, to make that Alameda account more negative, and when the
11 question about this was put to him on the witness stand, he had
12 no answer for it. That's the first moment to think about.
13 When you deliberate, that's a moment in time to think about,
14 when the defendant was presented with a choice and he chose to
15 double down, he took a criminal act, and that tells you
16 everything you need to know about his knowledge and his intent.

17 Here's the second moment in time, the second instance
18 when the defendant was given a choice and yet again he decided
19 to double down. And what I'm talking about now is a period in
20 the fall of 2021 when Alameda was already borrowing customer
21 money and was financially not in good shape. But the defendant
22 was greedy. And when he was presented with a choice again of
23 coming clean or doubling down and digging the hole deeper, you
24 know what he did. He kept digging. And this is the second
25 point in time that you can see where the defendant indisputably

1 knew about the financial situation, indisputably knew that they
2 were taking customer money, and then did it anyways. And that
3 shows you that he knew what he was doing was wrong.

4 So here's some background. In the fall of 2021, the
5 defendant sends Caroline Ellison what he calls the 10th
6 Percentile Scenario, which Ellison told you is something like a
7 scenario that could plausibly happen, isn't so likely to
8 happen, but you have to take seriously because it might happen.
9 And here's the question the defendant puts to her: What
10 happens in a scenario where cryptocurrency prices drop and a
11 bunch of our investments lose money, and what would happen if
12 in the meantime, we spend \$3 billion more on investments? So
13 it's like this scenario he's mapped out. And in everyday
14 terms, this is like: What would happen if I brought a brand
15 new sports car that's really expensive and then at the same
16 time the economy got really bad and at the same time I also
17 lost my job? This is like his version of: What is this thing?

18 And she, because everyone loves spreadsheets, does a
19 spreadsheet, and she makes a spreadsheet for the defendant that
20 addresses this question: What are Alameda's assets and
21 liabilities? And this is another critical document in the
22 case. This is one to think about. Government Exhibit 36. And
23 the name of this is NAV Minus Sam Coins. A funny name. It's
24 net asset value, or NAV, minus the Sam coins, which are the
25 coins, like FTT, that he created. So what's our financial

1 picture without the Sam coins? And this is something that she
2 shows the defendant, and he admitted during his testimony that
3 he saw it. That's at page 2458 of the transcript.

4 So let's look at what the defendant saw when he looked
5 at this spreadsheet back in 2021. So right off the bat,
6 Ellison has a calculation for the defendant of what Alameda's
7 value is without the Sam coins, NAV Minus Sam Coins. And the
8 Sam coins, by the way, are FTT, Solana, Serum. And the reason
9 they're doing the NAV minus the Sam coins is because those
10 coins are not so easy to sell. We heard like tons about this
11 in this case. They're not very liquid. There's not a market
12 for them. If you try to sell them, they're not easily—there's
13 not like a buyer out there who wants to buy \$3 billion of the
14 Sam coins. And so they've got a value, but that's just on
15 paper. In real life, you can't actually sell these things for
16 that much. So her estimate for what their finances are without
17 those Sam coins is what looks like, you know, as written, as
18 \$2700, negative 27, but we know these are all in millions, so
19 what that is is negative 2.7 billion. They are negative
20 2.7 billion at this point in late 2021. And then Ellison adds
21 up the assets and liabilities at the time, and here's what the
22 defendant saw. They've got 8 billion in assets, and 9 billion
23 in loans. So math, 8 minus 9 is negative 1, and so they're in
24 the negative. At this point he's already able to see in late
25 2021 that Alameda has more loans than it has assets.

1 And let me just pause here for a second and mention
2 that throughout his testimony, the defendant was saying these
3 things like, ah, at the time we had tens of billions, we had a
4 NAV of 40 billion, and that was funny number accounting and
5 just plain bald-faced lies. And when you think about it, think
6 about where is the evidence that those were actually real
7 numbers, where is the balance sheet that says those numbers,
8 where is the balance sheet that says those numbers with assets
9 that they could actually use or sell or spend, there isn't any.
10 And there are still—by the way, these are still billions, very
11 large numbers, but the point is, they're in the red.

12 And then there are these two lines on here that say
13 "FTX borrows," and Ellison told you, "that referred to the
14 amount of FTX customer deposits that were currently on the
15 exchange and that were available for Alameda to borrow." Let
16 me translate that. By "available. . . to borrow," what she's
17 talking about is FTX customer funds that are available to
18 steal, right, and spend however the defendant wanted.

19 So the defendant is looking at the situation with
20 Caroline, he sees that they've got more loans than assets, he
21 sees they're in the red. And I don't want to pass over this
22 like it's just some random number. When they're talking about
23 borrowing from FTX, they're talking about borrowing customer
24 money, and this number here, 3 plus 4, is how much customer
25 money exists there. It's like how much money is in the bank

1 that you could potentially rob. This is like the target right
2 here. 3 plus 4 is 7. This is how much money we can take. And
3 so this is the conversation: Here's how much money we could
4 take to potentially spend. And then the next question the
5 defendant asks Caroline, which is right in the spreadsheet, is:
6 What happens if the economy gets worse and how does this change
7 with another 3 billion of venture investments? Right? 'Cause
8 this was his question. This was: What happens if the economy
9 gets bad and then I want to buy that new sports car? And there
10 isn't a dispute over this. During his testimony, the defendant
11 admitted that the point of this spreadsheet was to consider
12 more investments for Alameda, coming out of customer money.

13 So, look, you don't have to go to MIT to know that if
14 you have more debts than you have money and you want to spend
15 more money, you're going to be in more debt. So when the
16 defendant had more debts than assets and the only available
17 money was this FTX customer money, where is the \$3 billion for
18 investments coming from in this scenario? And the answer is:
19 Customers.

20 So Caroline does the math, where she takes this
21 current financial picture and she assumes the economy gets bad
22 and crypto prices drop and then assumes \$3 billion more in
23 investments, and she told you her math told her spending
24 3 billion on investments was a really bad idea because they
25 could already not afford 3 billion without spending customer

1 money. How did the defendant respond? He said he wanted to go
2 ahead with billions of dollars of venture investments anyways.
3 So when you're thinking about the defendant's mind-set, think
4 about that. Think about how he's—how she's like, so financial
5 picture is not so good, also, we're going to spend \$3 billion
6 more and I think that's a really bad idea, and he says, I hear
7 what you're saying and I want to go ahead with it and do it
8 anyways. And this is easy math for him. He knows where the
9 money is coming from. It's coming from customers. And he
10 knows it could be a really bad situation where they don't have
11 the money for the customers, but he spends it anyways.

12 Now when the defendant was questioned about this
13 document, did you notice how he evaded talking about what the
14 document was actually about? He commented on some notes about
15 FTT and the note about hedging, and he just totally glossed
16 over what the spreadsheet was about, which was about how they
17 were in a poor financial position and did not have the money to
18 pay for new investments. And that was a deliberate decision by
19 him when he testified. It was deliberately evasive and it was
20 a misdirection. And that tells you how—why this spreadsheet
21 is important. It shows that he knew they were using customer
22 funds, and the way he reacted to this piece of evidence shows
23 you that he knew what he was doing was wrong.

24 Okay. So they have this moment in time. They talk
25 about this spreadsheet. They see the potential financial

1 picture. The defendant says, let's spend the money. And he
2 goes on this spending spree that would rival someone that had
3 just won the lottery, except he had not, obviously, won the
4 lottery, he had stolen billions of dollars. And so what does
5 he spend the money on? Professor Easton told you he spent the
6 money on this \$30-plus million penthouse apartment for him and
7 his friends and his co-conspirators to live in. And he spent
8 the money on a \$16 million house for his parents. And it
9 totaled 100 million on real estate. And all that came from
10 customer money. There's no real dispute that the money that
11 was used to pay for this real estate was coming from customers.

12 And by the way, when the defendant was asked about
13 these property purchases, when he testified on direct, he told
14 you another half-truth. As you can see, what he told you was,
15 it was that FTX paid for these, and that was only half the
16 truth. When you look at it, the money came directly from FTX,
17 but where did the money originally come from? It was passed
18 through a bunch of accounts, and it originally came from
19 Alameda. And where did the money originally come from to
20 Alameda? From customers. Why would he tell you it came from
21 FTX without acknowledging the true source if he thought it was
22 okay?

23 So the defendant also spends billions during this
24 period on investments. Right? And this was the plan. He
25 bought hundreds of millions of dollars of stock in Robinhood,

1 and here's the analysis by Professor Easton. Almost all of it
2 was customer money. He transferred that stock from Alameda to
3 a company he controlled called Emergent Fidelity Technologies.
4 And this is Government Exhibit 200. This is another important
5 document. And look who does this sale of all of Robinhood
6 shares held by Alameda to Emergent Fidelity Technologies. The
7 defendant, as the chairman and sole member of the board of
8 Alameda. This is all the defendant. He spent that money.

9 And did you notice how he responded when he was asked
10 about this particular document on cross-examination? He was,
11 again, evasive. First, he wasn't sure which board of directors
12 this was referring to, then he couldn't recall what Alameda
13 entity this was about, then he didn't want to admit that he was
14 the sole member of the board of directors of Alameda, then it
15 wasn't until he was asked whether he became a director by
16 mistake or accident that he acknowledged that he was the sole
17 member of the board. The reason he didn't want to talk about
18 this document is because this was a handshake with himself,
19 right? It's incriminating. Because it shows a transfer of
20 hundreds of millions in stock bought by Alameda using customer
21 money directly to the defendant. Just him, no one else, right?
22 It's a handshake deal with himself. And that tells you
23 everything you need to know about the defendant's intent.

24 He also spends 300 million on investing in K5, and
25 almost all that is customer money. And this is Government

1 Exhibit 56. It's the payment confirmation for that K5
2 investment, and it's signed by the defendant. It proves he's
3 responsible for this spending. Remember it was the defendant
4 who really wanted to invest in K5. Nishad Singh told you about
5 how he told the defendant it was an awful idea, but the
6 defendant wanted to invest with these guys because—the guy who
7 ran K5 because he hung out with celebrities, took the defendant
8 to dinner with famous people and made connections. Now the
9 defendant claimed, looking at this picture, that he just
10 happened to bump into these people at the Super Bowl, but right
11 after the defendant got back from the Super Bowl, he wrote to
12 Nishad and others that the guy who ran K5 was "probably the
13 most connected person I've ever met and we can get from them
14 essentially infinite connections." So he was celebrity
15 chasing. And he liked it. He liked the vibe of all this, he
16 liked the connections, and for him, it cost about \$300 million.
17 And he didn't have that \$300 million, so he took that money.

18 And there was other spending we saw evidence of too.
19 Genesis Digital, the crypto mining company; Anthropic, the
20 artificial intelligence company; Dave Inc., that online bank.
21 I'm not going to go through all of these. But during Professor
22 Easton's testimony and during the defendant's
23 cross-examination, he admitted that he was involved in all
24 these transactions.

25 Let me just pause here and note that the defendant

1 made a big point of saying that yes, he made these investments,
2 but he really only wanted to do some of them if Alameda also
3 hedged. Right? And let's just be clear about this. Wanting
4 to hedge these investments, that is not a defense. The
5 defendant was gambling with customer money. And whether he
6 thought these were sure bets or safe bets or risky bets or
7 almost sure bets, or that he was going to win more money back
8 in the long run, it doesn't matter. When he took the money and
9 he played roulette with it, he was stealing.

10 I expect Judge Kaplan is going to tell you just that.
11 He's going to instruct you on the law, and what he says
12 controls. I'm not going to read you the detailed legal
13 instructions that Judge Kaplan does, so you should defer to
14 everything he says. What he says trumps what I say about the
15 law. So I expect you're going to hear that if you wrongfully
16 take someone else's money, even if you think you might later be
17 able to put it back, that's still fraud. The defendant here
18 was greedy. He wanted to spend money. He wasn't satisfied
19 with what he had. This was like a person who just doesn't like
20 the financial situation but other—but rather than living with
21 what he has, he went out and took more money. And all the
22 dollars he spent on real estate and on investments and other
23 things are reasons you know the defendant is guilty.

24 The third point in time that I want to talk to you
25 about, where the defendant had a choice and doubled down and

1 dug the hole even deeper, is the discussion the defendant had
2 with his co-conspirators—his friends, the people who were his
3 roommates in June 2022—about Alameda having a \$10 billion
4 negative balance and then how he told Ellison to repay
5 Alameda's lenders, spending billions of dollars more in the
6 process. And this was another critical moment in the
7 defendant's scheme. He knows the financial situation. He
8 knows they're deeply in the red. And he decides to use more
9 customer money, knowing what he's doing. So let's walk through
10 that.

11 To set the scene at this point in time, it's May or
12 June and cryptocurrency prices have dropped, and Caroline
13 Ellison is looking at Alameda's balances and she sees they may
14 be insolvent, out of money, and the defendant is looking at
15 Alameda's balances at this time too. And you heard from
16 several witnesses that the defendant would sit at his computer
17 and would constantly have it open on six monitors, a page
18 showing Alameda's balances. And even when the defendant was
19 questioned about this, he ultimately admitted that, yeah, he
20 had a balances page on his computer, but it was just an auto
21 open. But he also told you that Ellison would routinely send
22 him Alameda's balance sheets and that he was reviewing them.
23 So he knew the financial situation at the time. He sees
24 Alameda's balances are not good. And he gets more bad news.
25 Alameda's lenders now want their money back, because the market

1 is going down.

2 Here's an example. This is Matt Ballensweig from the
3 crypto lender Genesis. He's messaging the defendant and
4 Caroline on June 13th, and he says, basically, we need our
5 loans back. Here's one of those messages. He writes, "We're
6 going to increase the OT loan pull back"—which is open term
7 loan pull-back—and he's looking for \$400 million back. And he
8 wants to know the ETA on 250 million.

9 So they're under the gun. They've got their lenders
10 asking for money.

11 And you heard a similar thing from Zac Prince, who was
12 the CEO of BlockFi, who testified on one of the Fridays that we
13 sat. And he made similar demands for the loan paybacks.
14 Ellison told you they were getting loan demands back from all
15 the lenders. And so the defendant knows that: (1) Alameda's
16 balances are not in a good place; and (2) they're about to get
17 even worse because all the lenders want those loans repaid.

18 By the way, this is literally the scenario that the
19 defendant and Ellison had talked about a few months prior,
20 right? A scenario which was like, our balances are not so
21 good, we've got more loans than assets, and what happens if the
22 market gets worse, and we've spent \$3 billion, and now here
23 they are. So he knew something like this could happen, and
24 then it happens. And then he's presented with another point in
25 time where he has to make a choice, and again, he's got two

options. Option one is what you heard some other
cryptocurrency companies did. Zac Prince told you about it.
The market got bad and they closed up shop; they couldn't repay
their loans.

(Continued on next page)

1 MR. ROOS: One option for the defendant was come
2 clean, face the consequences, and he didn't pick that option.
3 The other option was double down, more lies, dig the hole
4 deeper, spend more customer money when it came to repay.

5 And he doesn't stumble into this. He gets his
6 coconspirators together. He says: Let's figure out Alameda's
7 balances. Let dig in, figure how much debt it has, how much
8 money it can pull together. And you heard from each of the
9 witnesses about this, right. All three of them testified about
10 this moment in time. So this is a very important moment in
11 which the defendant has a criminal conspiracy where they know
12 what the financial situation is, and then he makes another
13 choice to do something wrongful.

14 Here is Caroline Ellison's testimony. The defendant
15 asked Caroline, Gary, and Nishad to put together a spreadsheet
16 showing Alameda's balances on FTX. She makes an initial
17 version and then Gary and Nishad revise it. Here is what that
18 looks like. This is Government Exhibit 50. This is a very
19 important document. It's one you have heard a bunch about.
20 And this is the balances sheet calculation for Alameda in June
21 of 2022. Taking a look at this exhibit, you immediately can
22 see that Alameda has a lot of negative balances, including
23 almost 3 billion negative in its main account. It's right
24 there.

25 Right there on the spreadsheet it has that fiat@FTX

1 account. You can see, even after that bug correction we heard
2 about, it has an \$11 billion negative balance, in addition to
3 the fact that the spreadsheet showed the defendant that Alameda
4 had a gigantic negative balance on FTX and it showed the
5 defendant that it had a -- that it had a fiat liability that
6 was very large and it showed the defendant had an overall
7 negative balance that was very large. Gary tallies up that
8 balance. That's the number right there. They are over
9 negative 11 billion. This is all in Government Exhibit 50.

10 So Gary told you that without Alameda's FTT that
11 Alameda's balance gets even higher as negative -- by higher, I
12 mean more negative, even more negative, to 16 billion. So
13 Ellison also makes an additional analysis. This is the same
14 exhibit. And it's a tab in the spreadsheet where she
15 calculates how much customer money they have taken to this
16 point, and here is that calculation. The tab is called balance
17 sheet by liquidity.

18 And one of the numbers on here which the defendant
19 sees is how much they are borrowing in customer money from FTX.
20 The number is 13.25 billion. Here is what Ellison said about
21 it. That represents 13.25 billion. That represents money that
22 Alameda was borrowing from FTX customers. So it's right there
23 in the spreadsheet. The defendant sees it.

24 And there is another key piece of information on the
25 spreadsheet. It's this. USD 13,000, 3,000 minus 10,000. What

1 does that number mean? Ellison told you. Those are the total
2 assets that were held by FTX at the time. So they, customers,
3 had deposited 13 billion and only 3 billion was available at
4 FTX. The other 10 billion, that minus 10, that's what they
5 borrowed on FTX.

6 So this spreadsheet, Government Exhibit 50, is very
7 important and from it the defendant knows the following: 1.
8 Alameda has a total negative balance of \$11 billion; 2. It has
9 borrowed over \$13 billion in customer money; 3. Around 3
10 billion of that is by going negative on FTX in its main
11 account. And there is another 10 or 11 by taking fiat
12 deposits. Finally, 4, as little as a quarter of the customer
13 money is actually on FTX. This shows there was a gigantic
14 hole.

15 This spreadsheet is a key piece of evidence because it
16 basically shows you everything you need to know about the
17 defendant's conspiracy, and what's so important about it is
18 that he and his coconspirators all work on it together. It's
19 absolute proof that he knew in June 2022.

20 Now, you have at this point heard about the
21 defendant -- you have heard the defendant testifying about this
22 meeting and this balance sheet. He told a very different
23 story. He acknowledged there was an issue with Alameda, and he
24 even acknowledged that Gary and Nishad and Caroline did a
25 spreadsheet, but then he just skipped the discussion of the

1 spreadsheet. He didn't talk about Government Exhibit 50 in his
2 direct testimony at all. And the reason he didn't want to talk
3 about it is because looking at the exhibit would tell you he
4 was lying during his testimony, that he knew clearly from the
5 exhibit exactly what was going on with customer money, he knew
6 where Alameda's balances were, he knew how much had been
7 borrowed, he knew what was left on the exchange.

8 You know that the defendant was lying about this
9 meeting because you heard from the three other people who were
10 not just in the meeting but were his friends, his closest
11 confidants. I think the defendant described him as the numbers
12 2, 3, and 4 people. And they all have testified about this
13 meeting. But there is another reason you know he's lying about
14 seeing this or knowing what's going on, and that's because we
15 were able to go back and get the metadata for this document.
16 You heard something about the metadata in this case, but I
17 don't think you folks actually saw the metadata. We are about
18 to look at it now.

19 Metadata, like I said, is just the information from
20 Google that tells you information about who viewed the
21 document, and we can use that metadata to determine whether the
22 defendant's version of what happened is right or whether all
23 three of the cooperating witnesses gave the right testimony --
24 sorry -- testified about what happened.

25 Here is that metadata, and it shows you the truth is

1 exactly what Nishad, Caroline, and Gary testified to. The
2 defendant viewed this spreadsheet on June 14. That means he
3 saw that fiat@ account. He saw Alameda's huge negative
4 balance, he saw Caroline's calculations, and he saw how much
5 money he was missing. The metadata fully corroborates what the
6 witness has told you, and it completely undermines everything
7 the defendant said about this.

8 By the way, this is Government Exhibit 50. The
9 metadata is called 50M.

10 There is more. The witnesses also told you about a
11 Google meeting they had over their computers to discuss the
12 spreadsheet. Here is Nishad Singh's testimony. He said during
13 cross-examination, actually, that I know that she, Caroline,
14 sent it, meaning the spreadsheet, to me, Sam, and Gary. I'm
15 sure that the four of us got on Google Meet and worked on it,
16 like investigating it. One Google Meet, one long discussion
17 over Google Meet.

18 Here is the evidence that happened. This is a Google
19 Meet record for June 14, 2022. And you can see the people who
20 joined the meeting, the Google Meet are the defendant,
21 Caroline, Nishad, and Gary. Here is the really important part
22 about this. Who started this Google Meet? The defendant. How
23 long was he logged into this meeting? 17,000 seconds, which is
24 a little under 30 minutes.

25 So when the defendant was on the stand and was

1 testifying that he didn't look at this and didn't know what was
2 going on, that was a total lie. He was studying it with his
3 coconspirators. He viewed the document. That's what the
4 metadata shows, that's what the witnesses said, and he had a
5 30-minute-long meeting to discuss it.

6 How did everyone react to Alameda's negative balances?
7 You heard that they were pleased to learn that there was no bug
8 and that the negative balance was 11 billion and not negative
9 20 billion. It was negative 11 billion and not negative 20
10 billion. But they still knew this was a big problem. Here is
11 an example.

12 Ellison testified in June 2022, we were in a bad
13 situation, and she was mostly concerned that if anyone would
14 find out, everything would come crashing down. The defendant
15 was thinking the same thing. He had seen Alameda's balances.
16 He knew its financial position was getting worse. He knew that
17 Alameda's lenders wanted their money back. So he knew that
18 everything could come crashing down if the truth came out.

19 Let me pause here for a second and just note something
20 about the relationship between these four people: The
21 defendant, Ellison, Wang, and Singh. By June 2022, you heard
22 the evidence in this case. By June 2022, they are sitting in a
23 room and on a Google Meet and looking at the negative balances,
24 and they have a long history together at this point. I am not
25 just talking about friends or as roommates or as people who

1 were dating. I'm talking about a long criminal history
2 together.

3 Remember, the defendant had directed Nishad to
4 backdate documents to inflate revenue a whole year earlier.
5 The defendant and Ellison have already stolen money to pay
6 Binance to get those shares back, and they had paid a bribe.
7 That all happened a year prior.

8 They had all lied to auditors by this point. The
9 defendant had told all three of his deputies, transfer a giant
10 negative MobileCoin loss to Alameda to hide it. He had Nishad
11 and Gary maintaining that fake insurance fund number. So they
12 have got a history together, right. They are used to at this
13 point doing crime together.

14 And so the reason that's important is, Government
15 Exhibit 50 is actually shockingly explicit in how it lays out
16 what they are doing, what they owe. But there is also and I
17 expect you are going to hear this from Judge Kaplan, a level of
18 history and comfort level, and that's why these folks can speak
19 in innuendo, in code, they can avoid labeling things explicitly
20 because they have a long criminal history together at this
21 point.

22 I told you that the defendant had a choice to make in
23 June 2022, and at this moment he decides what to do. He
24 doesn't decide to give up. Instead, he knows they are in a bad
25 place and he decides to double down, when Alameda is already in

1 significant debt, and repay lenders. And Gary Wang was asked
2 this directly: Where was the money coming from to repay those
3 lenders? And his answer was: Either from Alameda's FTX
4 account or from Alameda's accounts elsewhere, but, either way,
5 the money -- all the money came from FTX customers.

6 Caroline Ellison said the same thing. They knew where
7 the money was coming from. So did the defendant. He obviously
8 knew because this was his company. He was checking the balance
9 sheets, he was having his people work on the spreadsheet
10 project, so he knows where the money is coming from. Then it
11 is him, the defendant, who makes the call to repay those
12 lenders. Here is Ellison's testimony. It was Sam's decision.
13 So Ellison testified that the defendant continued to direct her
14 to repay loans. He was telling her to use customer funds to
15 repay our loans.

16 Wang said the same thing. He turned to Caroline,
17 meaning he, the defendant, turned to Caroline and said that
18 Alameda can go ahead and return the borrows to lenders who loan
19 Alameda's money. We are asking for it back. That's what they
20 did. Here is two documents, two exhibits we have looked at
21 already. They pay back the lenders using customer money. It's
22 in black and white. And it comes out of Alameda's account with
23 that big negative balance. It's customer money.

24 Overall, of the \$6.5 billion they used to repay
25 customer money, 4.5 -- of the 6.5 they used to repay lenders,

1 4.5 was coming from customer money. This is Government Exhibit
2 1018.

3 Let me just put this in context. We heard multiple
4 times over the course of this trial that there was somewhere
5 between 9 and 12 billion in cryptocurrency on FTX in the summer
6 of 2022. So when Alameda takes 4.5 billion off of FTX to repay
7 lenders, they are taking between half and a third of all of the
8 cryptocurrency on FTX, right. Let me say that again. They are
9 taking as much as half of the cryptocurrency that is supposed
10 to be sitting in the wallets to repay their lenders.

11 As the owner of Alameda and the CEO of FTX, that's
12 something the defendant clearly knew about. But according to
13 him, half the money from his exchange is gone, and he doesn't
14 know. According to him, Alameda has to pay back almost all of
15 its loans, has to pay out \$6 billion, and he doesn't know where
16 it's coming from. And, according to him, he is not checking
17 Alameda's bank accounts, he is not checking their balances,
18 he's not checking the fiat@ account. He can't see any of this.
19 None of it adds up.

20 If you were to believe the defendant's testimony, it
21 would have to be that somehow each of these people who reported
22 directly, his 2, 3, and 4 people, knew about Alameda's
23 balances, knew where the money was coming from. That just
24 doesn't add up that he doesn't.

25 Do you remember what he said when my colleague asked

1 him? He claimed that the people he supervised told him to stop
2 asking questions. He claimed that even though he had been
3 concerned, he was worried that Alameda was insolvent. He was
4 asking them to check the balances. There is this bug in the
5 system. He claimed that the people who reported to him were
6 like, stop asking questions.

7 And then, even though he had cancelled his trip to
8 D.C. and he was worried that maybe Alameda was insolvent, he
9 just didn't follow up, and he doesn't now remember what ended
10 up happening. I think his answer was, I can't recall.

11 There were four witnesses in this trial that said they
12 talked to the defendant about Alameda's massive negative fiat@
13 balance in June 2022: Yedidia, Wang, Ellison, and Singh. When
14 the defendant testified that he didn't learn and couldn't
15 remember, that was a lie. And the reason he's lying about that
16 is because this is a moment in time where he clearly knows that
17 Alameda is using FTX customer money, and he lied on the stand
18 because he knows it's wrongful and totally inconsistent with
19 everything he said publicly.

20 Let me make one last point about what happened in June
21 and why it proves the defendant knew what he was doing was
22 wrong.

23 Here is what the defendant does in May and June of
24 2022:

25 May 13. FTX publishes terms of service that say:

1 None of the digital assets in your account are the property of
2 or shall or may be loaned to FTX Trading. Promise to FTX
3 customers.

4 June 13. Genesis and other lenders asked the
5 defendant for loan repayments.

6 June 14. The defendant has the spreadsheet project,
7 and they look at all of it, and they see the negative balances.
8 He sees they are in the hole. He makes the decision to repay
9 the money anyways.

10 June 16. Repayment happens to places like BlockFi and
11 Genesis using customer money.

12 Then here is the revealing part. June 23. The
13 defendant's congressional testimony that we have already looked
14 at where he says: Whoever is in control of customer assets
15 cannot be misallocating or misusing those assets.

16 Then June 27 he tweets: Backstopping customer assets
17 should always be primary.

18 What this sequence tells you is that the defendant
19 went out in public, promised them, we are not using your money,
20 it's safe. Then in June he needs money, so he's taking his
21 customers' assets. And then if that wasn't enough, he has the
22 audacity within a week to go before Congress under oath and go
23 on Twitter and tell his customers, his victims, that he's not
24 using their money, that money, protecting their money is his
25 top priority, and when the defendant is doing that, when he is

1 taking their money secretly and then within a week is out there
2 publicly lying about it, that tells you he knows what he's
3 doing is wrong.

4 The next moment in time is June 2022, when the
5 defendant works with Caroline Ellison to send a fake balance
6 sheet to Alameda's lenders. This is another moment where the
7 defendant made a deliberate decision to double down on this
8 fraud. So what happened? We have been talking about June.

9 And after Alameda repays its lenders and spends
10 billions more in customer money, the defendant wants to take
11 out new loans, because he hasn't had enough of spending money
12 already, so he goes to Genesis and BlockFi and others, but
13 there has been changes in the cryptocurrency market and prices
14 have fallen and some of these companies have gone out of
15 business, so as third-party lenders they asked for new balance
16 sheets, and now he is presented with a situation that he has to
17 make a decision in.

18 No lender who actually knew the state of Alameda's
19 balances were ever going to lend them money, right. It was 10
20 billion plus in the hole, and that was before they repaid their
21 loans, and then he spent a few billion dollars more repaying
22 the loans, so they are deeply in the red, totally under water.
23 This was very clear to the defendant.

24 Caroline comes to him and says: I think it looks bad.
25 I don't think we can send this to Genesis, talking about their

1 balance sheet. Do you agree? And he says: Yeah, that sounds
2 right.

3 Here is Alameda's real balance sheet in June 2022,
4 Government Exhibit 44, the main tab. What's the reason they
5 can't send this to Genesis and other lenders? Ellison told you
6 it showed that Alameda was in a very risky position, borrowing
7 around 10 billion from FTX and with about 5 billion of its
8 loans to FTX's executives. Where does it show that? Here.
9 Exchange borrows: 9,900. That means, according to Ellison,
10 Alameda had borrowed 9.9 billion from FTX customers.

11 Here, related-party loans. That was 4.5 billion in
12 loans to the defendant, Wang, and Singh. According to Ellison,
13 it might make it look like Alameda was effectively giving or
14 funneling money to FTX executives.

15 So at this point the defendant knows Alameda is deeply
16 in debt. He knows they borrowed customer money, he knows that
17 it's in the billions, and he knows they have made billions in
18 loans to FTX executives.

19 So the defendant had to make a choice, and this is
20 another critical point, and he decides to lie yet again. He
21 told Ellison that she should prepare some alternative ways of
22 presenting this information and setting this thing up, ways to
23 conceal things in their balance sheet.

24 So Ellison creates seven alternative balance sheets,
25 and here is that. This is Government Exhibit 44. It's another

1 critical document to think about. The main tab here is the
2 real balance sheet, and then there are seven alternative
3 options. The alternative options hide Alameda's borrowing of
4 FTX customer funds and the big loans to the executives.

5 By the way, this spreadsheet is so obviously for the
6 defendant, because why would Ellison just be doing this solo?
7 In what world is a person making eight alternative balance
8 sheets for themselves and not be shared? She makes seven
9 alternatives because she knows someone else is picking an
10 alternative and that person is the defendant. So she testifies
11 then that Sam said we should use alternative 7. He said
12 alternative 7 looked like and that she, Ellison, should send
13 that one to Genesis.

14 The difference between the real balance sheet and the
15 fake alternative 7 balance sheet is obvious. Here they are
16 side by side. And what's missing from alternative 7? Exchange
17 borrows, meaning borrowed or stolen customer money. 10 billion
18 is missing. What else is missing? Related party loans for 4.5
19 billion. Remove from the spreadsheet. The defendant picked
20 alternative 7 because it concealed the evidence of his fraud.

21 And in case there was any doubt about the defendant's
22 involvement in this, here is the metadata on this document.
23 Government Exhibit 44M. It shows it was shared with the
24 defendant and he viewed it on June 19, 2022. He took a look at
25 it just hours before it went out the door to lenders.

1 If you have a balance sheet for your own private
2 viewing and then you make it an external balance sheet to send
3 to your lenders, that's fraud. And if you have two balance
4 sheets and they are totally different, then you -- clearly you
5 have one too many balance sheets. And if you prepare seven
6 alternative balance sheets and you are like, hey, let's go with
7 alternative 7, that's definitely the best one of how we stole
8 \$10 billion, that is definitely fraud, and you know that from
9 your own common sense and life experience.

10 The CEO of one of the lenders who testified in this
11 case, he said lending crypto isn't that different from other
12 types of lending, so imagine you knew someone who wanted to get
13 a mortgage or a small business loan, but before they walked out
14 the door to go to the bank, they said, you know what, let's
15 come up with an alternative statement of my financial position,
16 one that doesn't make my debts look so bad, makes them look
17 smaller. Let's actually come up with seven alternatives, and
18 then let's pick the version that makes my debt seems the
19 smallest, and let's give that to the bank. You would obviously
20 say to them, using your own common sense and life experience,
21 no, you cannot come up with alternative versions of your
22 finances and give them out to go get a loan.

23 Well, the defendant, he did just that. He picked the
24 alternative 7. He told Ellison to send it to their lenders to
25 get new loans. She sent it out. It went to Genesis. It went

1 to BlockFi. It went to other lenders. We looked at examples,
2 their balance sheet. Here is Government Exhibit 17. It's the
3 false balance sheet that went to Genesis. Here is Government
4 Exhibit 419. It's the false balance sheet that went to
5 BlockFi. Ellison told you all these were false because they
6 all omitted those key parts that the defendant wanted to hide.

7 As a result of sending out those fake balance sheets,
8 they got new loans. This shows it. Over a billion dollars in
9 new money came in. That's new money that the CEO of BlockFi
10 testified they never would have loaned had they been -- had the
11 truth been revealed.

12 So this is another important moment because it tells
13 you everything about the defendant's knowledge and his intent.
14 From just looking at the balance sheet, the defendant has to
15 know that they have been using customer money, both FTX
16 customer crypto and fiat deposits, because it says it. He sees
17 Alameda doesn't have much money in its bank account. It says
18 500 million in the bank, just a fraction of what it owes, and
19 he sees without its -- without those long-term investments,
20 which he can't sell and can't get out of, they actually have
21 fewer assets than liabilities, so he knows they are borrowing
22 customer funds.

23 The spreadsheet also tells you that taking and
24 spending billions of dollars of customer funds is wrong. Why
25 else would the defendant want to remove from Alameda's balance

1 sheets these figures, right? It's not like he is removing even
2 every liability.

3 Like if it was just about minimizing liabilities,
4 which by the way would still be a crime, but if it was just
5 about that, he would remove all of them, but he removes a
6 specific one, and the one he removes is the one that says, I'm
7 stealing money from FTX customers. So there is no confusion or
8 uncertainty about what his mental state is. He is picking the
9 one that is revealing that they have a fraud, and that's why he
10 is sending out a doctored balance sheet.

11 Now, we heard the defendant's story about this. This
12 time at least he admitted to seeing the spreadsheet. But his
13 testimony was extremely vague and evasive. Remember he said he
14 got the spreadsheet with the main tab and seven alternatives,
15 and he had to admit that because he has seen the metadata
16 proving it. But what did he tell you? He said that he doesn't
17 remember any of the details. He can't remember for sure which
18 tab he looked at. He can't remember if it had seven
19 alternatives. And he just went with one that seemed
20 reasonable.

21 Think about this explanation for a moment. Remember,
22 the defendant admitted that he was just warned this month that
23 his company might be on the verge of bankruptcy, and then he
24 gets his balance sheet for it and it has all these
25 alternatives, but he wants you to believe that he only just

1 looked at one of them and it just happened to be alternative 7,
2 and that he didn't ask Caroline any questions, and then they
3 just sent it out. It's not plausible. He has got no
4 explanation for the spreadsheet because it's really
5 incriminating evidence and because the metadata shows that he
6 viewed it. There is no innocent explanation for having eight
7 alternatives to a balance sheet and then picking one of the
8 alternative ones that omits the key crimey fraudy parts of the
9 balance sheet.

10 The next moment in time where the defendant presses
11 forward with his fraudulent scheme that we are going to talk
12 about is September. He has a conversation with the same
13 people. They have discussed Alameda's negative balances and
14 then he, again, made a choice to spend more customer money. So
15 it's another reason you know the defendant knew what he was
16 doing, knew that it was wrong, and then proceeded forward.

17 So in September 2022, the defendant knew that Alameda
18 was borrowing billions of dollars from FTX customers. In June,
19 the period that we just looked at, he saw these numbers on
20 spreadsheets. He knew they had just borrowed more from
21 lenders. They had just repaid money to lenders also. And by
22 September 1, he knows the number is \$13.7 billion.

23 How do we know that? Government Exhibit 90. This is
24 another important document. This is an internal balance sheet
25 from September 1, 2022. It shows that the defendant -- right

1 there it shows that Alameda is borrowing 13.7 billion from FTX.
2 There is no dispute the defendant saw this. Not only did
3 Ellison tell you he saw it, but, again, there is metadata that
4 shows it. By the first day of September he knows that Alameda
5 is negative. 13 or 14 billion, right. Keep this date in mind.
6 This is September 1. We are going to talk about what happens
7 next in September.

8 Notably, this is an exhibit that the defendant just
9 skipped over. He didn't even have an explanation for it. By
10 the way, remember, when the defendant claimed Caroline's
11 spreadsheet usually had multiple tabs, well, there is no
12 additional tabs on this one. It's just one tab and it says it
13 right there, right on its face, FTX borrows 13.7 negative, so
14 he knows in September.

15 A few days later, on September 7, the defendant sends
16 Wang and Singh a Google Doc about the pros and cons of shutting
17 down Alameda, and it's Government Exhibit 18. Here is the key
18 line in this document. Really hard to unwind Alameda. What's
19 that a reference to? When the defendant is writing, it's
20 really hard to unwind Alameda, what he's talking about is the
21 fact that Alameda has almost \$14 billion in debt of money it
22 took from FTX's customers. And that's not reading between the
23 lines. That's literally what they discussed when the defendant
24 raised this question of shutting down Alameda.

25 Here is Gary Wang's testimony. He says at pages 449

1 to 450 of the transcript: So I asked Caroline how much Alameda
2 was currently borrowing from FTX, and she said 14 billion. And
3 he was asked whether there was any way that wouldn't involve
4 the use of customer money, and Wang said no. Because FTX did
5 not have that much money itself.

6 Here is what Caroline said about this when she was
7 asked about Alameda's ability to repay that 13.7. She said:
8 We had no way to repay it. That's page 823 of the transcript.

9 Here is what Nishad Singh said at page 1403 of the
10 transcript. He learns that Alameda is borrowing 13 billion
11 from FTX. And Caroline Ellison tells him, Gary, and the
12 defendant over a Signal chat that it is impossible to close out
13 Alameda's borrowing because of the size of the hole.

14 How did the defendant respond to all this? Here it
15 is. Gary was asked just that question. Ellison says Alameda
16 was borrowing 14 billion. Do you recall the defendant
17 responding with any message of surprise? And Gary's answer was
18 no. No. He was not surprised when Ellison said they were
19 nearly 14 in the red because he already knew it. He was the
20 one who designed the systems. He was the one who had directed
21 the spending. He knew it from over the summer. He knew it
22 from the prior year. He knew it from the internal balance
23 sheets he was getting in September. He knew it from the
24 balance sheet he got six days before.

25 So Wang told the defendant the hole was too big to

1 shut down Alameda. And what did the defendant say? He said:
2 Acknowledged, acknowledged. No pushback, no request for
3 clarification, no like, well, what hole are you talking about
4 or what do you mean? No confusion. He just acknowledged it.

5 Here we have another conversation where you have three
6 witnesses who all said the same thing. They all said -- they
7 talked about a giant hole, between 13 and 14 billion, and
8 that's why they couldn't shut down Alameda. And the defendant
9 sat through this trial and he knows that's the witness'
10 testimony, and he knows they are saying he is part of that
11 conversation, and there is too much evidence for him to say, I
12 didn't know what was going on. I wasn't involved.

13 What does he say about it? Well, keep in mind at this
14 point we know that the defendant -- he admitted this, that
15 Alameda is only doing like 3 percent of the market making on
16 FTX, so he knows he can't say at this point the reason we
17 didn't shut down Alameda was because Alameda -- the reason we
18 didn't shut down Alameda is because Alameda was too important
19 to FTX. That's not a realistic or credible argument at this
20 point. He knows that. So he didn't say that.

21 What he said was, quote: He did not feel confident he
22 had gotten a clear reason why. So he was asked, what's the
23 reason? He says, I'm not confident I got a clear reason why.

24 Just think about this explanation. The defendant
25 wrote a five-page memo that includes six numbered points for

1 why to shut down Alameda. The metadata shows he worked on this
2 for hours, and it has got several subpoints and it has got a
3 list of alternatives and it has got the pros and cons and it
4 has got a two-page-long tweet string of what he would tweet out
5 if he announced Alameda being shut down. But his testimony is
6 that Gary and Caroline and Nishad came to him and said, we
7 can't do this, and then without any reason he just dropped it.
8 That's not a credible story.

9 That night the defendant and Nishad speak on the
10 balcony and Singh asked the defendant -- this is at page 1407
11 of the transcript -- what about what Caroline said today? And
12 Gary said today that there is a 13 billion borrowed and we
13 can't pay it all. He put the question to him directly. And
14 the defendant says: Right, that. We are a little short on
15 deliverables.

16 Again, there is no confusion, no question by the
17 defendant. He knows exactly what Nishad is talking about. He
18 says right, that. He is not surprised. He is not confused.
19 He has known for months. And he says: We are a little short
20 on deliverables. And this, by the way, is quite an
21 understatement for a \$13 billion hole, but it's still a damning
22 concession. He knows there is a hole. He knows they can't
23 fill it if the customers want their money back. We are a
24 little short on deliverables.

25 And then the next thing he says is critical. He says:

1 This has been taxing me for some 5 to 10 percent of my
2 productivity for this year. What is he saying? He is saying
3 that this has been weighing on him because he knows that
4 Alameda cannot repay this debt and that FTX is at risk, which
5 means he is at risk of having his fraud be exposed. That's
6 what is weighing on him. And Nishad says: This is going to be
7 doing a lot more damage to me hitting me a lot harder. And the
8 defendant says: Yeah. I was worried about that. It might
9 have been a mistake for me to circulate that document this
10 morning. People are going to freak out. They have stolen the
11 money.

12 Nishad sees the giant hole, and he is freaking out,
13 and the defendant knew they were stealing the money too, but he
14 wasn't freaking out as much as Nishad. You know the reason why
15 is because he was already comfortable with the situation. He
16 had already known about it for a long time and it was his
17 decision to take that money, so he has come to terms with it.
18 He wanted to use the money. He did use the money.

19 He had the arrogance to think he could get away with
20 it and just raise more money from other investors or come up
21 with somehow. When people like Nishad started freaking out
22 about it, he said the mistake here wasn't, we by accident took
23 the customer money. The mistake here wasn't, I thought we
24 could use the customer money. The mistake was telling Nishad
25 about it. That tells you everything you need to know about

1 what the defendant was doing, why this was deliberate, and why
2 what he was doing was wrong.

3 This is another place where we heard a different story
4 from the defendant. He admitted that he talked about Alameda's
5 liabilities, but he was very vague about what actually was
6 discussed in the conversation.

7 But you know that Nishad's explanation, his testimony
8 is corroborated by another witness, because you heard from Can
9 Sun. He was the last witness before our break. And what he
10 told you is, he told you about a conversation that he had with
11 Nishad before FTX went bankrupt, as it was collapsing.

12 Here is what Can Sun said that Nishad said to him
13 right before the collapse. He said that he had found out about
14 the hole, basically that Alameda was taking FTX customer assets
15 in September 2022. He said that he confronted Sam directly
16 about it, and Sam told him back then that it is what it is and
17 there is nothing we can do about it. That's page 1954 of the
18 transcript. That's very important. It's how you know that
19 Nishad is telling the truth about the conversation with the
20 defendant.

21 And defense counsel may get up and say that Nishad has
22 a poor memory, but remember this testimony from Can Sun. Can
23 Sun told you that he had a conversation with Nishad, right.
24 And Nishad told him, recounted what happened, and this happened
25 long before Nishad ever met with the government, long before he

1 ever testified here. It's a prior statement by him, a
2 statement before, according to the defendants, he didn't have
3 any reason to change his story, and that tells you, that's
4 evidence for you to consider when you are evaluating his
5 testimony.

6 Now, what happened next is predictable. Caroline told
7 you that throughout 2022, she was in a constant state of dread,
8 and she was worried imagining every day what might happen.

9 Nishad told you that he was blindsided and horrified
10 that FTX had turned out to be so evil, that spending anything
11 after September was necessarily digging the customer deficit
12 hole deeper continuing the crime.

13 But what did the defendant do? Again, he doubled
14 down. Here is the proof. This is a spreadsheet of all sorts
15 of investments the defendant was doing, and look at these two:
16 250 million to Modulo Capital on September 26, 45 million to
17 Skybridge on September 7. Those are hundreds of millions of
18 dollars after Nishad confronts him, after he tells him to stop
19 spending customer money, and the defendant keeps doing it.

20 And notice the names on the spreadsheet. The names on
21 the spreadsheet are the defendant and people who he said
22 reported to him. They are not Caroline, they are not Nishad,
23 they are not Gary. It's the defendant who is doing the
24 spending.

25 Here is the proof it was the customer money. This is

1 Government Exhibit 1033. Professor Easton testified that, on
2 September 26, a payment to Modulo Capital came exclusively from
3 customer money. Here is Exhibit 314. It's a Slack message in
4 which the defendant says he wants to make that payment to
5 Modulo. Here is Government Exhibit 350. This is the contract
6 signed by the defendant committing 250 more to Modulo. This is
7 all the defendant's doing.

8 The same is true for that payment to Skybridge. This
9 is Government Exhibit 1028. It proves the Skybridge investment
10 was paid for with customer money. Here is the proof it was the
11 defendant's doing: Government Exhibit 201. It's the
12 investment credit contract signed by the defendant as founder
13 of Alameda Research ventures.

14 One more. This is part of Alameda's ledger. And in
15 September and October 2022, there are millions of dollars going
16 out to Sam Bankman-Fried. That's Government Exhibit 141A.
17 Below that shows that at least some of that money went to
18 political donations. That's Government Exhibit 1089.

19 Here is why that's so important. This is a really
20 important point, and think about the timing.

21 September 1, the defendant sees a balance sheet
22 listing Alameda's borrowing of customer money at 13.7 billion.

23 September 7, he proposes shutting down Alameda, talks
24 to his coconspirators. They all talk about how there is a
25 giant hole. Nishad confronts him on the balcony. He's

1 freaking out. He tries to get the defendant to stop spending
2 money. He tells the defendant: Every dollar you spend is
3 customer money.

4 The same day he spends \$45 million on Skybridge. Ten
5 days later he transfers \$10 million out to himself. September
6 26 -- September 22, transfers \$4 million to himself.

7 On September 26, transfers \$250 to Modulo for his
8 investment.

9 Finally, October 3, he transfers 6 million more for a
10 political donation.

11 In the month of September he knows Alameda is
12 massively in debt, he knows it doesn't have the money, he knows
13 they are taking from customers, and he knows what he's doing is
14 wrong. That's all that you need to know to find him guilty.

15 The last moment in time I want to talk about is
16 November. In November, the defendant tells more lies,
17 including false tweets to try to keep customer money.

18 Now, you remember in November customers started
19 withdrawing their money from FTX as a pace faster than the
20 defendant had seen before. Everyone was nervous, and the
21 defendant and his coconspirators were nervous, not just about
22 the pace of the withdrawals, but what could happen as a result
23 of all the withdrawals. Their fraud might be exposed.

24 Here is what Ellison said. She was terrified. This
25 is what she had been worried about for months. When she was

1 asked if they could repay she said: We could not.

2 Now, the defendant knew he had a problem. He was
3 doing the math and watching the withdrawal numbers and wrote a
4 Google Doc on November 6 with notes about the current status.
5 And this is a very important document, Government Exhibit 21.
6 Here is what he wrote. They had, quote, enough to process
7 about one-third of remaining client assets. Let me repeat
8 that. He writes, the defendant writes: We have enough to
9 process one-third of remaining client assets. In other words,
10 they are missing two thirds of the money. But the defendant
11 had a plan, a criminal plan, fraudulent, and this alone is a
12 basis to convict him. Here is his plan. Send a confident
13 tweet thread. That's what he calls them. What does that mean?
14 Nishad told us, quote: A very confident and therefore
15 misleading statement or false statement about FTX's financial
16 condition. The point here, folks, was to stop getting people
17 to stop withdrawing their money.

18 Now, Nishad told the defendant he was, quote, not
19 comfortable with this. He said: No, no way. Recusing myself.
20 He didn't want a part of it. And the defendant acknowledged in
21 a kind of annoyed way, and then he proceeded to tweet. Here is
22 what he has tweeted, and you have now seen this tweet a bunch
23 of times. You know it well. Government Exhibit 866.

24 The first tweet on November 7 says: FTX is fine.
25 Assets are fine. Every witness said this tweet was false or

misleading.

Here is Gary Wang. Was the tweet accurate? No. Why not? FTX was not fine. Assets were not fine because FTX did not have enough assets for customer withdrawals.

Here is Nishad. Was that accurate as of November 7, 2022? No. We had determined definitively that FTX had a hole. So this first tweet was plainly a lie. It was a confident tweet to fool customers into not withdrawing their money.

Look. It wasn't just the defendant's coconspirators who knew this was false. The defendant knew this was false, and we know that from the time. Notice when he sends this tweet that assets are fine. It's on November 7 at 7:38 a.m. That's after he has written internally that they only have one-third of the assets they need. So compare those, 866, Government Exhibit 866, to Government Exhibit 21.

Here is another example. At 3:08 a.m. on November 7, the defendant sends a list of possible assets that they have in the small group Signal chat. And here is his math. He estimates there are 12 billion in customer assets they need to meet, but he is only able to come up with that number at the bottom, 3.9 billion. So he has got a difference, and there it is, a deficit, a hole of 8.1 billion. Remember the time. This is at 3:08 a.m. on November 7.

What does he do four hours later? Tweets. He's missing 8.1 billion, according to his own chat, and he says,

1 assets are fine. FTX has enough to cover all client holdings.

2 This is yet another case where the defendant took the
3 stand and said something totally that was contradicted by the
4 evidence. He sat there and he said he only realized there was
5 a hole on November 8. But you have seen his own Signal
6 messages now. You have seen his own Google documents. You
7 know that was not the case.

8 Defendant didn't stop there. This is his second
9 tweet: FTX has enough to cover all client holdings. We don't
10 invest client assets, even in treasuries. That was false.
11 Gary Wang testified this was not true because FTX did not in
12 fact have enough assets to cover all client holdings and
13 because FTX was lending client assets to Alameda.

14 Caroline testified that the tweet was not true because
15 FTX only had 4 billion to cover 12 billion of client holdings.
16 Nishad testified that the tweet was even more false than the
17 last one, that FTX did not have enough to cover client
18 holdings.

19 What was the result of the defendant's lies? FTX
20 customers didn't withdraw their money. Here is what one
21 customer said. He was relieved after seeing the defendant's
22 tweets. He found it reassuring. Another customer told you
23 that after seeing the defendant's tweets he felt comfortable to
24 just sit and wait.

25 That's what the defendant had intended. He sent a

1 confident tweet thread, a series of false tweets to lull his
2 victims into leaving their money, to convince them that
3 everything was fine, assets were fine, while the wall was
4 coming crashing down.

5 The fact that the defendant lied on Twitter to
6 convince people to not withdraw their money is really important
7 for two reasons.

8 The first reason is, it shows he had criminal intent.
9 He knew the situation and he lied. He knew he had only a third
10 of the money, four out of 12, \$8 billion hole. He knew that
11 before he tweeted, and then he tweeted anyway. It wasn't an
12 accident. It wasn't a misunderstanding. He had intended it.

13 The second reason, these are important, is I expect
14 Judge Kaplan will tell you that if after obtaining money, like
15 customer deposits, the defendant participated in a scheme to
16 keep the victim's money by making false or fraudulent
17 representations, that is, to retain it, that can be a scheme to
18 defraud. So when you find the defendant made these false
19 tweets, that alone is a reason to find him guilty of fraud.

20 There is one more thing I want to talk about briefly
21 for November, and that is a conversation that happens the next
22 day with Nishad Singh as he's leaving the Bahamas. So he has a
23 conversation over Signal with the defendant. And in that
24 Signal chat the defendant makes an admission.

25 Let's look on November 8, shortly before Nishad

1 leaves. He was in a dark place. He was suicidal, as he told
2 you, and he sends a Signal message to the defendant. This is
3 Government Exhibit 480C. So he sends the message and he says:
4 This is Nishad. He says: Wildly selfish of me. But they, the
5 FTX employees, may need to know that there wasn't a ton of
6 people orchestrating it. I think it makes them more likely to
7 want to be here to help save the situation. What's the it?
8 The it is the fraud. Nishad is saying to the defendant: FTX
9 employees need to know there wasn't a ton of people
10 orchestrating this fraud. And Nishad explained this. He
11 said -- he testified about it. He said he wanted the defendant
12 to clarify what everyone's role in this fraud was. He said it
13 was selfish of him because he wanted the defendant to clarify,
14 that he, Nishad, wasn't orchestrating it. Nishad was saying to
15 the defendant that he should clarify, that is, the defendant
16 should clarify he was orchestrating it.

17 How does the defendant respond? Yup. For what it's
18 worth, I don't think that's super selfish. I think that's
19 probably correct. There it is. Nishad asked the defendant to
20 clarify that he was orchestrating the fraud, and the defendant
21 says, I think that's probably correct. This is an admission to
22 his coconspirator at the end of the conspiracy that the
23 defendant was orchestrating. That is a reason right there to
24 convict him.

25 Notice what he doesn't say. He doesn't say:

1 Orchestrating what? He doesn't say: That's not right. He
2 doesn't say: Anyone else is to blame. He says: I think
3 that's probably correct.

4 Keep in kind this context. The context is, this is a
5 Signal message, one of the messages that they have been sending
6 all along to auto delete, and this is one of his closest
7 confidants. It is not a public tweet. It is not an interview.
8 This is a private space between him and his coconspirator over
9 an encrypted messaging platform with auto delete set so he can
10 tell, Nishad, I think that's probably correct.

11 I told you the questions we were going to answer.
12 They were: What happened? Where did the money go? Who was
13 responsible? We have now answered those questions together,
14 what happened. The defendant was motivated by greed and
15 ambition, and he wanted more money for Alameda, so he set up
16 systems to take the money. We have talked about what he did.
17 We talked about where the money went. It went to investments,
18 to purchases, to expenses, to donations. It was siphoned off.
19 And the defendant is responsible.

20 Your Honor, do you want me to keep going? I'm about
21 to switch sections.

22 THE COURT: I thought you were. I think we will break
23 for lunch. Ten minutes past 2 we will resume.

24 (Jury not present)

25 THE COURT: Time.

1 MR. ROOS: I think I'm over three-quarters of the way
2 done. I think I gave the jury a roadmap, and I said the last
3 two parts were a few defenses and the elements. That's what I
4 have left.

5 THE COURT: Time.

6 MR. ROOS: I am going to estimate 30 minutes. Could
7 be a little longer.

8 THE COURT: OK. Thank you.

9 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:14 p.m.

3 (In open court; jury present)

4 THE COURT: Defendant and the jurors all are present,
5 as they have been throughout. You may be seated, folks.

6 You may continue, Mr. Roos.

7 MR. ROOS: Thank you.

8 When we left off, we had talked about what happened,
9 where did the money go, and who was responsible, and you now
10 know the answer to all those three questions.

11 Now at the beginning, this morning, I told you there
12 were a few things we were going to do, and the last two were
13 talk about the crimes and talk about some of the defense
14 arguments you've heard, and these parts will be a lot shorter.
15 We've already covered the meat of it. So let's get into it.

16 The defendant is charged with seven crimes, and
17 they're up there on the screen. You can read them. And
18 basically they fall into four categories—fraud on FTX's
19 customers; fraud on FTX's investors; fraud on Alameda's
20 lenders; and conspiracy to commit money laundering. And Judge
21 Kaplan is going to give you detailed instructions on these
22 crimes tomorrow, and you should listen to them closely. I'm
23 just going to talk to you about how some of the evidence you've
24 heard fits within these crimes.

25 So let's turn to the fraud crimes. There are three

1 counts relating to the fraud on FTX's customers—wire fraud on
2 customers, conspiracy to commit wire fraud on customers, and
3 the essence of Counts One and Two is that there was a scheme to
4 defraud FTX's customers by making false statements to get them
5 to deposit their money, and then by misappropriating or
6 embezzling or stealing that money that had been entrusted to
7 the defendant and his company, the defendant knowingly and
8 wilfully participated in that fraud, and that there were
9 interstate wires that were used as part of it. And that last
10 part just means wires are things like emails, financial
11 transactions that go across states, phone calls.

12 Count Two relates to the same types of conduct but
13 it's a conspiracy charge, and the essence is that the defendant
14 had agreed with at least one other person to commit the wire
15 fraud, okay?

16 So let's talk also about Count Six. Count Six is the
17 conspiracy to commit commodities fraud charge. And this is
18 another conspiracy charge, and there are three elements. And
19 they're up here on the screen. And they're very similar to the
20 wire fraud elements except for a few distinctions that I'm
21 going to talk about in a few minutes.

22 Here's the objective of the commodities fraud
23 conspiracy, and you'll see there are elements that resemble
24 parts of the wire fraud charge. Again, Judge Kaplan's going to
25 give detailed instructions on all of this. You don't need to

1 learn or memorize this now. But the key is that there was—in
2 connection with the sale of commodities or swaps, the defendant
3 knowingly and wilfully participated in a scheme that involved
4 an artifice of fraud or manipulative device.

5 Now these fraud crimes are what we spent most of the
6 morning talking about, right? We spent the entire morning
7 talking about the false statements the defendant made. We
8 talked about the false pretenses he set up by displaying
9 customer balances while simultaneously not actually having that
10 money behind the scenes. We talked about the relationship of
11 trust he established, how his policy documents indicated he and
12 his company were a trustee of his customers, how they were in a
13 custodial relationship, and how, simultaneously, he was lying
14 about that, how he embezzled and stole that money.

15 And we've talked about how the defendant orchestrated
16 the scheme by convincing customers that they could trust him,
17 about how he made lies, about how he directed people, how he
18 made statements and representations, how he moved the money,
19 how he stole and how he misappropriated. And we've also talked
20 at length about the overwhelming proof that he knew what he was
21 doing was wrong, that he knew what was happening with customer
22 money, that he had a fraudulent intent, and that he agreed with
23 his co-conspirators. So we've already gone through all the
24 evidence that establishes that he's guilty of these frauds on
25 customers.

1 And on this last element that we talked about, about
2 the wires, you saw the tweets, you saw the financial
3 transactions, so that's met too.

4 Now on the conspiracy charge, conspiracy to commit
5 commodities fraud, for that charge only, there is an additional
6 element, which is that the crypto involved fit the definition
7 of a commodity. And the defendant even admitted that before
8 Congress in 2021.

9 There it is right there. He's admitting that Bitcoin
10 and Ethereum are two tokens covered as commodities under the
11 CFTC definition. You also heard evidence from Adam Yedidia
12 where he explained that the futures that were sold on FTX were
13 the exchange of risk which resembled what Judge Kaplan will
14 describe to you as a swap.

15 And the other requirement is that some of the
16 conduct—and this is, again, just for the commodities
17 conspiracy—either occurred in or affected the United States.
18 And Judge Kaplan will give detailed instructions on that, and
19 follow his instructions. And what I'll tell you now is that
20 there's plenty of evidence that in connection with the
21 commodities fraud charge, Alameda was in the United States.
22 That's where its bank accounts were; it itself was incorporated
23 there; North Dimension, through which the defendant sold
24 customer fiat deposits, that was set up in the United States
25 and had a bank account in California; the defendant made false

1 statements in the United States when he was physically located
2 in Washington, DC; there were customers like BlockFi and
3 Sculptor of the United States. So this requirement is easily
4 met.

5 Counts Three and Four charge the defendant with wire
6 fraud on lenders and conspiracy to commit wire fraud on
7 lenders. And the essence of Counts Three and Four is that the
8 defendant schemed and conspired to make material false
9 representations to Alameda's lenders, and that he knowingly and
10 wilfully participated in that. And again, they used the wires.
11 And on these counts, the evidence is straightforward, and it's
12 overwhelming. I'm not going to spend much time on it because
13 the key document here is that alternative spreadsheet,
14 Government Exhibit 44. That's the spreadsheet that laid out
15 the real balance sheet and the alternative balance sheets. And
16 you've heard and you've seen all the evidence that that fake
17 balance sheet was sent to BlockFi and to Genesis and then
18 afterwards they loaned new money. And you heard testimony from
19 the CEO of BlockFi, who told you that those types of
20 representations mattered to them, that they would have not made
21 the same lending decisions had they known the truth, had they
22 known there was a massive borrow from FTX customers, or had
23 they known that the balance of assets and liabilities were
24 different, or had they known that there were these undisclosed
25 loans to executives. So that's all evidence of why the

1 defendant participated in and conspired to participate in a
2 scheme to defraud Alameda's lenders. And the evidence on that
3 is overwhelming.

4 Let's talk about Count Five. This is the securities
5 fraud on FTX's investors. And this is another conspiracy
6 charge. And there are three elements—that there existed a
7 conspiracy to commit securities fraud; that the defendant
8 joined the conspiracy; and that one member of the conspiracy
9 committed an overt act.

10 And I expect Judge Kaplan is going to tell you that
11 the crime of securities fraud, which now there's a summary on
12 the screen, the essence of it is that there's a scheme to
13 defraud or make false statements in connection with the selling
14 of a security—so here, FTX's stock—and that the defendant
15 knowingly and wilfully engaged in that scheme or conspired to
16 engage in that scheme. And again, this involved the interstate
17 or foreign commerce.

18 So what are we talking about here for Count Five?
19 Again, the evidence is overwhelming. And the primary evidence
20 here is very similar to the other counts. We heard from
21 investors like Matt Huang, who was the first week of the trial,
22 one of the first witnesses; and Robert Boroujerdi, who was one
23 of the later witnesses, I think the last witness in the
24 government's case—second to last witness. The last witness
25 before the break. They testified about how the representations

1 about—and the statements they received about how customer
2 funds were treated, how they were used, were all important to
3 them, and if they had known the truth, they never would have
4 invested.

5 But the fraud on FTX's investors is not just limited
6 to those types of false statements. There's also other frauds
7 that were made on FTX's investors, and so I just want to
8 highlight those for you. And you've heard evidence about this.

9 And one is, for both those investors, you heard that
10 they were very interested in the relationship with Alameda,
11 right? And this is separate and apart from how the customer
12 funds were used. They were interested in whether there was a
13 conflict of interest between Alameda and FTX or the defendant
14 in being involved with both those companies. And the defendant
15 told those investors time and time again that there was no
16 conflict of interest, that Alameda was treated just like
17 everyone else, that they were separate, and those are lies that
18 mattered to those investors. And that alone is enough to
19 convict the defendant of securities fraud, or conspiracy to
20 commit securities fraud. You could even convict him of
21 conspiracy to commit securities fraud without deciding the
22 question of whether he knowingly used the customer money. And
23 of course that evidence is overwhelming, but I make this point
24 because there were so many lies to those investors.

25 Here's another one. He lied about the revenue

1 information. Do you remember this document? And it came up on
2 cross-examination. There was a point in time in 2021 where the
3 defendant wanted the revenues to be over a billion dollars for
4 FTX. And so he had a conversation with Nishad Singh, and they
5 agreed on putting in some revenue, some money, some income, for
6 something called Serum staking, right? And this was of course
7 at the end of 2021, so it's kind of—it's like the last day of
8 the year. It's too late to earn a bunch of money. And so they
9 just add these numbers to their balance sheets, to the FTX stat
10 sheets, and we've got—we saw that. That was Government
11 Exhibit 51. So they add this fake revenue, and it's backdated.
12 And Nishad Singh admitted to that. But the defendant
13 initially, when he testified, he said, oh, I wasn't involved in
14 that, I didn't know about that, but then on cross-examination,
15 he was confronted with the exhibit you're looking at right
16 here, Government Exhibit 323. And this is the key. This is
17 signed by the defendant, right? And it's dated in January of
18 2021. So the deal goes down, the backdated transaction, at the
19 end of 2021, but he signs this document dated January 2021, and
20 he admitted that on the stand. And what that tells you is he
21 agreed to this backdating, he agreed to trick his investors,
22 and those investors testified that if they knew the revenue
23 numbers or the expenses numbers were different, they wouldn't
24 have invested. That would have mattered for their
25 decision-making. They of course would not have invested if

1 they had known that the defendant was lying to them, that he
2 was backdating transactions, that he was coming up with phony
3 documents.

4 There were some other points you heard about the
5 investors. The defendant fraudulently concealed the fact that
6 they were shifting some of the losses to Alameda. He concealed
7 the fact that the FTX insurance fund wasn't so big. You heard
8 testimony early in the case from Gary Wang about how in fact
9 that FTX insurance fund number was a made-up number. They
10 literally just had this random number generator that they used
11 to come up with a fake number for the insurance fund so they
12 could project that out. And that was the same information they
13 were giving to their investors, when they're saying this is a
14 safe system. So the lies to the investors are pervasive, they
15 mattered to them, they invested, and they lost all their money,
16 and it's very straightforward, and the evidence is
17 overwhelming.

18 One last point on this. You remember he moved FTX
19 investor money from FTX to Alameda. And we saw one of the
20 things they spent that money on; that was on real estate. And
21 so this is Government Exhibit 1023, and it shows you all the
22 investors who had their money moved over from FTX, which they
23 thought they were investing in, to the Alameda slush fund. And
24 so he duped investors by lying about this too. And that's
25 another reason to find him guilty of investor fraud.

1 Let's talk about the last count, Count Seven,
2 conspiracy to commit money laundering. As I expect you'll hear
3 from Judge Kaplan, there are two ways to commit money
4 laundering. The first way is in essence to engage in a
5 financial transaction that is designed to conceal a source or
6 the nature or the ownership of the money that came from that
7 wire fraud the defendant engaged in. And the other way is by
8 doing a financial transaction over \$10,000 that involves the
9 money from the wire fraud. And you've got both of those here.
10 And you're going to have to be unanimous on at least one of
11 them, but he can be found guilty if you find unanimously that
12 he is guilty of either of them. And he certainly did that
13 here. And I'm not going to spend a lot of time on that because
14 we've already this morning walked through dozens of
15 transactions in which the defendant moved money from Alameda's
16 bank accounts that had customer money to another bank account
17 and to another bank account, and to another bank account, and
18 to another bank account, and they did it for those donations
19 that they were running through Nishad Singh and Ryan Salame,
20 they did it for the investor—for the investments, where they
21 ran it through a bunch of bank accounts, and so the evidence on
22 this is very straightforward.

23 And keep in mind, I'm not going to go through all
24 Professor Easton's charts, but they're numbered Government
25 Exhibits 1001-1051. That's the full range. And so if you want

1 to look at all his tracing, his analysis of the balances,
2 that's the range to ask for, 1001-1051. They all show that the
3 defendant stole money and moved money, and engaged in money
4 laundering to conceal the source of the funds.

5 There's one last requirement which here is called
6 venue. And that just means that acts in furtherance of the
7 crimes need to have taken place in the Southern District of New
8 York, which includes Manhattan. And there was plenty of that
9 in this case. FTX processed wires through Signature Bank,
10 which was located in Manhattan. So is ED&F Man, where those
11 Robinhood shares were purchased. Tareq Morad, who was one of
12 the customers who testified in this case, he told you that the
13 wire to fund the accounts was processed through a Wells Fargo
14 bank in New York. BlockFi and Genesis, which are both lenders
15 in the case of BlockFi, which is also a customer, are in New
16 York. Zac Prince, the CEO of BlockFi, said he got those
17 balance sheets while he was in Manhattan. And customers and
18 investors like Third Point and Sculptor are based in Manhattan.
19 And finally, you know from Richard Busick, who was the FBI
20 Agent who did the cellular tower analysis, he told you that the
21 defendant was all over Manhattan doing meetings with investors,
22 acts in furtherance of his crimes. And that analysis is
23 Government Exhibit 1080. So venue has been met.

24 Those are the crimes the defendant is charged with,
25 and the evidence is overwhelming.

1 And so in our final minutes together, what I want to
2 talk about are some of the defenses you've heard in this case.
3 And like I said, the defense didn't need to make any arguments.
4 We have the burden, and we embrace that. But when they do make
5 arguments, you should scrutinize them. And I want to focus on
6 just three arguments that have come up in this case.

7 Here they are: the argument that the defendant acted
8 in good faith; the argument that he thought it would all work
9 out in the end; and lastly, this argument that this was somehow
10 margin lending.

11 And so starting with the first argument, I expect
12 Judge Kaplan will tell you that good faith is when someone
13 honestly believes in the truth of what they're saying or
14 honestly believes the victims were not being deprived of
15 property. And that's not what happened here. We spent this
16 morning talking about all the reasons you know the defendant
17 knew what he was doing was wrong, and those are all reasons why
18 the defendant wasn't acting in good faith.

19 Here's another reason. We've seen this chart before.
20 This is Government Exhibit 1083. The defendant used Signal.
21 Now of course there's nothing wrong with texting and nothing
22 wrong with encrypted apps. But what the defendant insisted on
23 was auto-delete. He insisted that their Signal chats be
24 deleted. And I expect Judge Kaplan will tell you that if you
25 find that the defendant deleted communications, you can infer

1 that he believed he was guilty, that he didn't have good faith.
2 And so how do you know that was his purpose here? Well, Adam
3 Yedidia testified that when the defendant began insisting that
4 people use Signal and delete messages, he said it was "all
5 downside for the messages to be kept around. And if regulators
6 somehow found out, found something they didn't like in those
7 messages, that could be bad for the company." And the result
8 was that when FTX collapsed and people were asking questions,
9 there were no Signal messages before November, and that made it
10 a lot easier for the defendant to claim that he had no idea
11 what happened. And so this is important. It's in some ways a
12 small point, but in other ways it's very significant. He knew
13 what he was doing was wrong. He envisioned a day like today.
14 He knew that some day the regulators would see something they
15 didn't like. What he means is they would see something that
16 was incriminating. And so he had in mind a courthouse, a
17 courtroom like today, and he didn't want it to be like that so
18 he demanded that the messages be set to auto-delete. And of
19 course he couldn't delete everything, but that was the aim
20 here, and that tells you about his intent and that it wasn't
21 good faith.

22 And you also heard about coded language he used.
23 Ellison told you the defendant would get upset when they used
24 explicit words, so she said things like "FTX borrows" or "the
25 thing," instead of saying things like FTX customer funds.

1 And finally, on this topic of good faith, I want to
2 talk about one conversation the defendant had with Can Sun, who
3 was one of FTX's lawyers, as FTX was collapsing.

4 In FTX's final days, after one potential investor
5 asked the defendant for "a legal justification as to why the
6 funds were missing, and were at Alameda," the defendant asked
7 Can Sun to come up with legal justifications. And this
8 testimony by Can Sun all begins around page 1959 of the
9 transcript. Now importantly, at this point the defendant
10 didn't point to any legal justifications for taking the money.
11 He had none. When Sun asked whether the defendant
12 identified—when Sun was asked whether the defendant had
13 identified any justifications that he was aware of, the answer
14 was no. And that shows you—this is an important point. The
15 answer "No" is important because it shows you the defendant was
16 not acting in good faith. He didn't have a justification at
17 the time for why he honestly thought this was okay. He posed
18 the question to Sun. He didn't say, I think I'm allowed to use
19 this customer money, can you please confirm this for me; he
20 said quite the opposite. He didn't provide any justification.
21 And so then what happens next?

22 Can Sun takes a look at the terms of service and does
23 some other research around the company, and then goes on a walk
24 with the defendant, and during that walk, here's what Can Sun
25 tells the defendant. He says there was no justification for

1 the funds being missing and taken by Alameda. He says there
2 were theoretical arguments, but none of them were supported by
3 the facts. And what's important about this conversation is
4 what happened next. It's the defendant's reaction is what
5 particularly matters here. And so he tells—Sun tells the
6 defendant that while there are some other crypto exchanges that
7 do not make it clear what is the relationship between a user
8 when they deposit funds on the exchange and the exchange,
9 that's not feasible for us because of our terms of service.
10 They make it very clear that when a user deposits assets onto
11 the exchange, those assets continue to belong to the user. So
12 in other words, Sun is telling him Alameda cannot use customer
13 money. And then, like I said, what's important is how the
14 defendant responds, because it tells you everything about his
15 good faith or lack of good faith here today. The defendant
16 doesn't fight him. He agrees with Can Sun. He says—and
17 here's the testimony—"he acknowledged." He "basically said
18 something like, got it." He "wasn't surprised at all." If the
19 defendant actually believed that he was allowed to use customer
20 money, as he claimed when he took the witness stand, why didn't
21 he say that back in 2022? In this private conversation back in
22 2022, why didn't he say what he said up on that witness stand?
23 He didn't direct Can Sun to some part of the terms of service.
24 He just acknowledged Sun's conclusion and didn't seem
25 surprised. And that tells you he wasn't acting in an honest

1 belief or in a good faith.

2 There's another part of this conversation that matters
3 and tells you something about the defendant not acting in good
4 faith. And that's that Can Sun told the defendant that he
5 considered, as one of the theoretical justifications, whether,
6 under Section 16 of the terms of service, which concerned
7 margin trading, whether FTX could have theoretically argued
8 that it could take the customer funds. So that was another
9 theoretical justification that Can Sun raised with the
10 defendant. And Sun told the defendant that he asked Nishad and
11 Ramnik Arora, another employee, to pull some numbers, and those
12 showed that this theoretical justification was not supported by
13 the facts. And how did the defendant respond? Again, this is
14 the key part for knowing about his intent. He acknowledged.
15 "He said, yup, yup. No pushback." By the way, do you notice
16 how Can Sun's answer resembled exactly the way the defendant
17 answered? "He said, yup, yup. No pushback." This tells you
18 that the same time the defendant didn't think this was part of
19 the terms, at this time the defendant did not think this part
20 of the terms of service allowed him to use customer money. And
21 that's important, not just for his good faith or lack thereof,
22 but it's important because of what happens next.

23 After FTX declared bankruptcy, the defendant did
24 interviews. You heard about that during his testimony. And
25 one of them was on *Good Morning America* with George

1 Stephanopoulos. And during the interview the defendant is
2 confronted with the exact same terms of service that he spoke
3 to Can Sun about in that private meeting. And Stephanopoulos
4 presses him. He says, "If Alameda is borrowing the money that
5 belongs to FTX depositors, that's a bright red line, isn't it?"
6 And Stephanopoulos is gesturing to the terms of service. It
7 says that "digital assets may not be loaned out to FTX. They
8 can't be loaned out." So Stephanopoulos confronts him with
9 this.

10 And the defendant takes a long pause. And then he
11 gives a false excuse. He says, "There existed a borrow lending
12 facility on FTX, and I think that's probably covered in the
13 terms of service." So the defendant gives Stephanopoulos, on
14 television, the very justification he had discussed with Sun as
15 not being a theoretical justification that worked. And this is
16 a false excuse. And I expect Judge Kaplan will tell you
17 tomorrow that if a defendant gives a false excuse or a false
18 exculpatory in order to divert—in order to divert suspicion
19 from himself, you may consider that as evidence that he
20 believed he was guilty. So this is another reason you know
21 that the defendant was not acting in good faith, because he
22 thought he was guilty, and that's why he lied and gave a
23 justification he knew wasn't true on television before he was
24 charged with a crime.

25 There's another defense I want to touch on just very

1 briefly, and this is the defense that the defendant has brought
2 up again and again, that he just got unlucky. When he took the
3 witness stand, he blamed everyone and everything. He claimed
4 the problem wasn't from—that they didn't hedge right, that
5 they had bad luck, that FTT prices dropped, that the
6 investments happened to be illiquid, and the defendant claimed
7 that with just a little more time, everything could have worked
8 out, and they could have processed some more withdrawals. And
9 I expect Judge Kaplan is going to tell you that a belief by a
10 defendant, even an honest belief, that ultimately everything
11 would work out fine or that victims wouldn't ultimately lose
12 money, does not mean the defendant acted in good faith. The
13 crime here was when the defendant took the money, when he made
14 false statements to get that money. What ended up happening
15 later on doesn't make him not guilty of the crime.

16 The last argument I want to talk about today is this
17 idea that it was all margin lending. And with every hour the
18 defendant spent on the witness stand, we saw this argument get
19 more and more absurd. Suddenly, any withdrawal off the
20 exchange, to repay any sort of third-party debt or expense, or
21 to buy muffins, this was a margin trade, according to the
22 defendant. And according to the defense opening, the theory, I
23 guess, is that Alameda was also doing these margin loans and
24 that somehow, under the terms of service, they could just rip
25 all the customers' money because everyone was doing margin

1 trading. And this was an argument that was put out by the
2 defendant after he committed his crimes, after he was arrested.
3 It isn't supported by any facts. You should reject it.

4 Here's what really happened. First things first. FTX
5 customers did not automatically have their money in the spot
6 margin loan program. It wasn't free money for the defendant to
7 take or borrow. Customers had to opt in. They had to agree.
8 They had to enable margin trading. That's what we're looking
9 at on the screen. So if a customer didn't enable spot margin
10 trading, their money couldn't be borrowed. One example is the
11 very first witness you heard in the case. He testified that he
12 never enabled spot margin trading. His money wasn't in the
13 program. It shouldn't have been taken.

14 And even after a customer opted into the spot margin
15 trading, their money still isn't in the program. It's not just
16 there just because you turned on the opt-in. You have to then
17 take another step and lend it out. And that's what this shows.
18 Customers had to actually click the lend.

19 Now the defendant called this witness Mr. Pimbley, and
20 he showed some charts of the balances of people who had just
21 opted in. But that didn't represent what was actually going
22 on. As he conceded during cross-examination, his charts don't
23 show how much money customers actually agreed to lend out. It
24 just shows the balances of the customers who had opted in, not
25 what they actually lent. The amount that was actually

1 available to be borrowed, the amount that actually had been
2 lent, was a lot smaller. And we can see that from one of
3 Professor Easton's charts.

4 Here's a third problem with the defendant. The main
5 account that Alameda was borrowing through did not even have
6 spot margin enabled. So this whole idea that, oh, they're just
7 borrowing through the spot margin program, in fact, notice how
8 all of Alameda's accounts with the "Allow Negative" set were
9 not enabled for the spot margin borrowing. That means none of
10 the accounts that match up to the withdrawals were ones that
11 had spot margin trading. Maybe Alameda had other accounts that
12 had spot margin trading, but the key is these accounts they
13 used to make those gigantic withdrawals of customer money,
14 those were not part of the spot margin system.

15 And here's some proof of that. Government
16 Exhibit 1002. It tells you that the giant negative balance is
17 the one that's coming out of these "Allow Negative" accounts,
18 from 2 to 12 billion negative. And that's not any borrowing in
19 the spot margin program.

20 And by the way, we're just talking about stealing
21 money off the exchange right now. Of course we talked this
22 morning about stealing customer money through fiat deposits.
23 And there was tons of spending of customer money on
24 investments—K5, the crypto mining company, the AI company, the
25 donations, the real estate, that all was just coming out of

1 bank accounts. And that is just straight embezzlement. That
2 is theft. That is not borrowing on the spot margin program.
3 That was off-the-exchange borrowing.

4 Here's the fourth problem I want to highlight with
5 this defense. Professor Easton told you there was not enough
6 money in the spot margin program to explain all Alameda's
7 borrowing. What this shows is that from June to November 2022,
8 Alameda had taken between 8 and 12 billion, when there was at
9 most 4 billion in the margin lending program. This is
10 critical. It is literally, mathematically impossible that they
11 could have taken the money from the borrow/lend or the spot
12 margin program. It's impossible, mathematically, that this
13 could have been a loan, right? And this is the key distinction
14 I was talking about. You have to look at what customers were
15 actually lending out, what was actually available to be
16 borrowed. That's the key. It's not—the number is not the
17 balances. It's what was actually being lent out, what was
18 available to be borrowed. And these are in Government
19 Exhibits 1010 and 1011.

20 Finally, there's a real problem with the claim that
21 defense counsel made in his opening that FTX could somehow claw
22 back money from unwitting customers who were doing margin
23 loans. Here's the piece of the terms of service they put up in
24 their opening statement.

25 Nishad Singh testified, after this argument emerged,

1 he testified that clawbacks weren't even implemented. The code
2 could never cause a clawback. So how about this. This whole
3 argument of, oh, well, there's a scenario where you can claw
4 back money because, you know, we socialized the losses,
5 fiction. They actually hadn't even built the system. It was
6 not in the code. This was not a real capability. This was
7 just, well, we'll get to it, we'll tell you what this is.

8 What Can Sun said, who was one of the authors of the
9 terms of service, he was asked about this, and what I want to
10 highlight is what he said about it. He said he talked about
11 this—he had not discussed the specific provision with Sam,
12 right, but when he talked with Sam about clawbacks, the
13 defendant always made it clear that FTX does not claw back
14 money from users, right? So we have this argument now that's
15 totally contrary to the defendant's prior statements. And
16 here's the important point. At the end, "I just asked you,
17 what's the reason this is in there? If it's not—if they
18 couldn't even do it, what's the reason it's in there?" Can Sun
19 said, "Well, in fact, this provision was drafted mostly for
20 disclaimer purposes, nothing more."

21 I expect Judge Kaplan will tell you tomorrow that a
22 defendant cannot disclaim away his false statements and lies by
23 putting a provision in a terms of service. And keep in mind
24 these terms of service, they weren't even adopted until May of
25 2022, which means there were thousands of customers who never

1 even agreed to this when they joined FTX.

2 Here's my last thought on this margin defense.

3 When the defendant was asked directly yesterday under
4 cross-examination whether he was saying the big hole in
5 customer funds in November was the result of a clawback, he
6 sort of fumbled for a second. And then he said he wouldn't
7 describe it that way. He conceded that's not actually what
8 happened. This is a distraction. It's something manufactured
9 after the fact. It's something that he came up with after
10 everything came crashing down. He came up with it for a day
11 like today, in a courthouse, and you should reject it.

12 You've all paid close, careful attention. Let me
13 leave you with this thought. This was a fraud that occurred on
14 a massive scale. Thousands of people lost billions of dollars.
15 Everyday people lost savings, companies went bankrupt, all
16 because of this defendant's fraud, because he wanted more money
17 to do whatever he wanted with. So when you go back to the jury
18 room, follow the truth. Let the evidence prevail over his
19 storytelling. The defendant, he lied and he stole from his
20 customers; he lied and he stole from his lenders; he lied and
21 he stole from his investors. He's guilty of wire fraud; he's
22 guilty of securities fraud; he's guilty of commodities fraud;
23 and he's guilty of money laundering. Do justice. Reach the
24 only verdict consistent with the evidence, with the law, and
25 with the truth, that the defendant is overwhelmingly, beyond

1 any reasonable doubt, guilty.

2 THE COURT: Thank you.

3 Mr. Cohen.

4 MR. COHEN: Thank you, your Honor.

5 THE COURT: And somewhere in the next 45 minutes, if
6 you can reach a point that's convenient to you to stop for the
7 afternoon break. And I'll also say to the jury, depending on
8 how things are going, I may ask you to stay a little late this
9 evening just to allow Mr. Cohen to finish.

10 MR. COHEN: Ladies and gentlemen, I want to start by
11 thanking you again for your service in this case. We saw that
12 you took your duties as jurors seriously, and you listened very
13 hard to the evidence as it came in. You've all done an
14 excellent job listening to a case about many foreign terms,
15 about crypto and jargon like margin and cross-margining and
16 Bitcoin and so on, in what may have been an entirely new
17 industry for you. And we're very grateful for you for giving
18 us the time from your lives and your service on this jury and
19 for keeping an open mind.

20 You know, there have been times during this past four
21 weeks when I have wondered what case it is we're actually
22 trying here. What do I mean by that? Time and again—and we
23 just heard it this morning—the government has sought to turn
24 Sam into some sort of villain, some sort of monster. They
25 spent an extraordinary amount of time on this. It's both wrong

1 and unfair, and I hope and believe that you have seen that it's
2 simply not true, and, more importantly, it's not a basis on
3 which to decide this case, which is about specific charges in
4 an indictment and specific counts. The government's core case
5 is premised on—it's based on a false premise, which their own
6 witnesses have rejected, that from the very beginning, from
7 jump, FTX was a fraudulent enterprise established by Sam and
8 Gary, Caroline and Nishad, to intentionally steal customer
9 funds from the very earliest days, and that the events of June
10 through November of 2022 were simply a continuation of that
11 fraud. And as we'll get into, that's not what the evidence
12 showed here.

13 And that's why we submit that the government keeps
14 portraying Sam as this villain. According to the government,
15 everything Sam ever touched and said was fraudulent.

16 Can we pull up the slide.

17 So here we got evidence about Sam's hair, his clothes,
18 testimony about his sex life, photos of him looking awkward
19 next to celebrities, photos of him sleeping on a private jet;
20 photos of him with big hair, photos of him with messy hair;
21 photos of him holding a deck of playing cards. They started
22 off, first sentence, second sentence of the opening statement,
23 what were we talking about, charges in the indictment? No, we
24 were talking about how he lived in a \$30 million apartment and
25 flew on private planes and met with Tom Brady and Bill Clinton.

1 And the list goes on. In opening, Mr. Rehn gave us a
2 movie opening, where he pointed at Sam, "that man, that man."
3 We just saw that again in summation, like you'd see in a movie.
4 Every witness who had been his friend pointed to him from the
5 stand, even though we stood up and stipulated, of course it's
6 Sam. He's here. Why? Why? For the effect. Why does the
7 government keep doing this? Is it because they want to make
8 him into someone you'll dislike, someone you won't approve of
9 and therefore you'll vote to convict him, rather than making
10 the case about whether the facts do or do not satisfy their
11 burden of proof? You know, Sam's appearance has nothing to do
12 with how the FTX exchange worked or with Alameda's trading or
13 asset values, and his appearance and his romantic relationships
14 have nothing to do with whether he's guilty of the specific
15 counts charged in the indictment.

16 And let us say this, just to get it out of the way.
17 We'll agree that there was a time when Sam was probably the
18 worst-dressed CEO in the world, and had the worst haircut. And
19 we'll agree that the evidence in this case showed that Sam
20 would talk to just about anyone—any TV reporter, any
21 journalist, any blogger, you name it. And that made his life
22 messy and made things messy as well, but that's not a crime.
23 The reason we focused—the reason the government focused much
24 of its case on Sam's appearance is that every movie needs a
25 villain. And let's face it, an awkward high school math nerd

1 doesn't look particularly villainous, so what did they do?
2 They wrote him into this movie as a villain, a bad guy,
3 directing others, who apparently had no free will of their own,
4 to steal billions of dollars. They invited you to overlook the
5 absence of proof that Sam actually committed any of the crimes
6 charged in the indictment, and they relied on that evidence.
7 Just as in a movie, the cooperating witnesses—and there were
8 five of them, five cooperating witnesses, Gary, Caroline,
9 Nishad, Can Sun, who had a non-prosecution agreement, and Adam
10 Yedidia, who had immunity, in short, the only five people who
11 had direct contact with Sam on the key facts alleged in the
12 case—they went up to the stand and, on cue, over and over and
13 over again, they said, "Sam told me to do it." Even as to
14 simple things which we would normally think they would admit as
15 of their own free will.

16 And that depiction of him made no sense in the real
17 world, especially coming from these witnesses who were his
18 closest friends, who knew him for years, who had gone to camp
19 with him, to college, who had lived together with him, who'd
20 worked with him for years, starting two businesses, who
21 traveled with him and moved all over the world with him.
22 That's a lot to do with someone you're now coming forward and
23 saying is so terrible.

24 And what the government kept leaving out of its movie
25 is the "why." Why did FTX develop the way it did? Why did Sam

1 make the decisions he did? And what was he thinking at the
2 time when he was CEO? And in doing so, in not focusing on the
3 "why," they didn't fully address whether they carried their
4 burden of showing that Sam acted with criminal intent.

5 And I'm going to go through the evidence that was
6 presented at the trial, but before I do that, let me just give
7 you a couple of quick examples on this point.

8 If you can put up the last slide.

9 The first slide. The first slide.

10 Okay. Look at the photo on the left. And the
11 government exhibits, numbers are on the slide. This is the one
12 they put up of him shuffling the deck of cards. Of course they
13 never asked any of their witnesses what the significance of it
14 was. They were just trying to imply that he's a gambler. One
15 of the themes of the case is Sam takes too many risks. He
16 takes more risks than the other witnesses. Well, we asked the
17 "why" question, and it turns out that he'd been shuffling cards
18 to control his natural fidgeting, and he was doing this for
19 years. He didn't even play poker. And then today we heard on
20 the government's summation, oh, and during his testimony he
21 looked away. Really? What does that show?

22 The government asked its witnesses about the change to
23 the code base. We'll talk about that in some detail in a
24 moment. But they never ask why the changes were made at the
25 time. But why? We did. And what you heard not just from Sam

1 but from the government's witnesses, that the code changes were
2 put in place as responses to specific events. And they were
3 put in for valid business reasons, not to carry out some grand
4 fraudulent scheme.

5 Another quick example. The government raised the fact
6 with you that because FTX at first did not have its own bank
7 accounts that Alameda received deposits. Alameda did and then
8 this other account in North Dimension. And in its opening
9 statement, the government told you that in and of itself was a
10 crime, part of the crime. But then what did their witness say?
11 It wasn't a crime. We understood why they had to do it. We
12 didn't have bank accounts for FTX so it was fine to receive the
13 funds in the account.

14 And because they don't focus on the "why," the
15 government failed to mention in its summation that none of the
16 witnesses at this trial testified that Sam told them or
17 directed them to violate the law or said or did anything that
18 showed he thought he was violating the law. Back in 2019, Sam
19 didn't say to Gary, hey, we just created this successful
20 company Alameda, I've got a great idea, let's set up FTX so we
21 can use our secret company Alameda—wasn't secret—to steal
22 customer money. No witness came forward and said that Sam told
23 them to steal customer money or commit crimes.

24 Now in contrast, what we've been trying to present to
25 you, and I'll discuss today, is more of a real-world

1 perspective. And in the real world, unlike the movie world,
2 things can get messy. We know that real life doesn't unfold
3 like it does in the movies. In the real world, people misjudge
4 things. They make mistakes. They hesitate. They don't plan
5 for the unexpected. They make good and bad business decisions,
6 and they make mistakes that later on they wish they could have
7 fixed. And Sam explained what really happened and why things
8 unfolded the way they did on his watch. They may not fit the
9 government's movie of making Sam into a villain, but that's
10 what this case comes down to—what was his intent at the time
11 of the events in this case.

12 And this case breaks down roughly into two periods,
13 two time periods. From 2019 to 2021, the events in this case,
14 the evidence in this case don't show Sam acting with criminal
15 intent. The evidence doesn't support that. In fact, none of
16 the cooperating witnesses—not Gary, not Caroline, not Nishad,
17 not the others—acted during this period like they thought they
18 were doing anything wrong, like there was any business problem
19 at all, let alone wrongdoing. They all were making millions of
20 dollars. None of them left. None of them resigned. None of
21 them notified the authorities or called attorneys, or
22 confronted Sam about what they're now saying were improper
23 practices. None of that. Because they didn't think they were
24 doing anything wrong. Instead, up until June 2022, everyone
25 thought they were operating one of the most successful crypto

1 exchanges in the world, which they had built together over the
2 past few years. They thought they'd come up with a better
3 mousetrap for a crypto exchange and customers would be joining
4 in the millions.

5 Now the government suggested during the evidence that
6 all this growth into a company of this size and complexity was
7 because Sam sent out a few fraudulent tweets and got customers
8 to put their funds on the exchange.

9 Is that really what the evidence showed? Rather, the
10 business grew because they all worked very hard together. The
11 business grew because they had excellent products. And it was
12 an excellent business that ultimately grew and had had hundreds
13 of employees, licenses in many countries throughout the world,
14 and had millions in daily revenue. We asked why these things
15 happened the way they did during this period, and the
16 government doesn't want to focus on that.

17 As for the next period, second period of the case,
18 that's the period we all spent a lot of time on in this trial,
19 from June to November of 2022. And here we would submit to you
20 that what we have with the government is really a tale of two
21 different cases. We all know by now that May and June of that
22 year is when what's been called the "crypto winter" began.
23 Very simply, if you were in crypto at that point in time, all
24 you had to do was look out your window and you were going to
25 see stress and crisis. Businesses failing, businesses going

1 under.

2 And this was the same time that the fiat@ coding bug
3 was discovered and became understood by FTX and Alameda's
4 leadership, and we'll cover that in a bit. And it was also the
5 first time that it started to become clear that Alameda might
6 have been borrowing not only from the info@ account, the main
7 account, the one that Sam observed and checked, but also from
8 customer deposits via the fiat@ account. The government did
9 not establish that Sam knew about these issues until the fall
10 of 2022, because he didn't. In the period from June to
11 November 2022 is when the government—when the government's
12 witnesses we heard from had a different take on what was
13 happening than Sam. In fact, they had a different take on what
14 was happening from each other. Between Gary, Caroline, Nishad,
15 and Sam, everyone had a different view of when they first
16 understood the meaning, the impact of this fiat liability, and
17 what their view was and whether Alameda could have the
18 liabilities as they came due. Sam for his part looked at the
19 situation in the fall of 2022 as a liquidity problem, not a
20 solvency problem.

21 And just to take up quickly something Mr. Roos said at
22 the end of his summation, this wasn't Sam saying, oh, don't
23 worry, I just thought everything would work out okay. No. At
24 the time, as events unfolded, Sam perceived this as a liquidity
25 problem, whether Alameda could pay its liabilities as they came

1 due, and as they were due, and as the period unfolded, in
2 hindsight, he may not have been perfect. I don't think any of
3 them were. He may have hesitated. He may have moved too
4 slowly. But he always thought that Alameda had sufficient
5 assets on the exchange and off the exchange to cover all of its
6 liabilities.

7 Now the government made a big deal about that. Well,
8 you're not supposed to consider assets off the exchange.
9 You're only supposed to consider Alameda's assets on the
10 exchange in thinking about whether it could meet its
11 obligations. But then in the same way they also say Sam owned
12 Alameda, Sam controlled Alameda, Sam knew what Alameda had.
13 Well, if he owned Alameda, he knew what its assets were, both
14 on and off the exchange, and he knew what could be brought to
15 bear if necessary to pay liabilities. And he also knew that he
16 owned FTX, or was the majority owner of FTX, and it had its own
17 value and its own equity, its own worth that could be used, if
18 necessary, if it came to it, as well as his own personal
19 assets. And these were differences in opinion, differences in
20 business judgment between Sam and the others about how to value
21 Alameda's assets, what you could consider, what you couldn't
22 consider, and how to act, how to act during the period, which
23 now in this case—and that's why I opened with the comment I
24 made—the government has tried to spin into a crime. But the
25 question of whether Sam's business judgment was reasonable,

1 even if it later turned out to be mistaken, is not a criminal
2 one.

3 And there's something hanging over everything, ladies
4 and gentlemen, something that Sam mentioned and some of the
5 other witnesses weren't mentioned at all. FTX did not have a
6 sufficiently built out risk management system, nor did it have
7 a chief risk officer, someone to head up the risk management
8 function. If it had a chief risk officer, wouldn't she have
9 insisted on fixing the bug when Gary first spotted it, not in
10 2022 but at the end of 2021? If they'd had a chief risk
11 officer, would it really have taken six more months for
12 Caroline to notice that the bug had grown so large that it was
13 having an \$8 billion effect? If they'd had a chief risk
14 officer, wouldn't she have insisted that the fiat liability
15 issue be handled the minute FTX got its own bank accounts, so
16 the funds didn't sit there and build up in value?

17 And Sam told you during his testimony that FTX sure
18 should have had a better built out risk management department,
19 and he's absolutely right. But again, systems of poor risk
20 management is not a crime. Again, bad business judgments are
21 not a crime.

22 We'll walk through the November sequence for you in
23 detail later on. And let me just—before I turn to the next
24 part of what I have to say, let me just ask, why are we
25 covering this? We don't have a burden. We don't have a burden

1 to offer any proof. We could simply just try to respond to the
2 government's case. The reason we're doing this, the reason
3 we're showing you what we believe really happened, is to show
4 you there's an alternative way to think about it, fully
5 supported by the proof, and that negates the government's
6 burden. It means the government has not carried its burden of
7 proof.

8 Now for the next parts of my summation, I'm going to
9 talk about a few things just to orient you. First, I'm going
10 to talk a little bit about the legal standards you are to
11 consider; then I'm going to go through for you our view of the
12 chronology of what really happened during these key periods;
13 then I'll make some points about the government's case; and
14 finally, I'll have some concluding remarks.

15 Now let me start with the legal standard. Now I
16 should say—and I agree with Mr. Roos on this—the only person
17 whose word controls on the legal standards is Judge Kaplan. He
18 will give you the legal instructions. And you, of course, are
19 bound to do what he says in applying the law. But we
20 anticipate that he will give you some of the following
21 instructions, and I want to go through them for you.

22 If we could bring up slide 3, please.

23 You've heard about good faith a lot in this case. At
24 the top you can see good faith is a complete defense to all the
25 charges in the case. The government bears the burden of

1 establishing a lack of good faith. And we expect you will hear
2 that because an essential element of the crime charged is
3 intent to defraud, it follows that good faith on the part of a
4 defendant is a complete defense to the charge of wire fraud.
5 Good faith is an honest belief by the defendant that his
6 conduct was not wrongfully intended. Moreover, a defendant has
7 no burden to establish a defense of good faith; it remains the
8 government's burden to prove fraudulent intent and the
9 consequent lack of good faith beyond a reasonable doubt.

10 Good faith, as I mentioned, is a complete defense to
11 all the charges in this case. Now what does that mean?

12 If we could go to the next slide.

13 Here are some things that we submit do not establish,
14 do not establish a lack of good faith. If the defendant made
15 mistakes; if he made bad business decisions; didn't have a risk
16 management department or a fully built out one; if he delayed
17 or hesitated; if there were coding and accounting errors; if he
18 had an honest belief that statements were truthful; or if he
19 didn't know what fellow executives didn't share with him or
20 other witnesses were inconsistent. None of those establish a
21 lack of good faith, we submit.

22 If we could move to the next slide.

23 And all this discussion of good faith is of a piece
24 with the following: In a criminal case, the government bears a
25 heavy burden, which never shifts to the defense. To convict

1 Sam of any count, the government, you must find beyond a
2 reasonable doubt, including that Sam did not act in good faith
3 and he acted knowingly and wilfully, and your verdict must be
4 unanimous.

5 And the Court will instruct you on what it means to
6 act knowingly and wilfully, and you should follow the Court's
7 instruction.

8 So this burden of proof is very heavy, and is very
9 high. And that's why the government gets to speak twice.
10 Mr. Roos spoke this morning, I'm going to speak, and then the
11 government gets to speak again. And your first reaction might
12 have been, why do they get to speak twice? Well, that's why,
13 because they have the burden of proof. It never shifts to the
14 defense. We were not required to do anything. We didn't have
15 to question a single witness or offer any evidence. And again,
16 as part of the government's burden, you must be unanimous in
17 order to find Sam guilty of any count.

18 (Continued on next page)

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1 MR. COHEN: As you consider the evidence in your
2 deliberations, we ask you to think very carefully about the
3 burden of proof and good faith, and I'll come back to these in
4 the summation.

5 Another point I want to cover with you which I
6 mentioned in opening four weeks ago is that the government
7 can't present its case by arguing about facts in hindsight.
8 The focus must always be on what Sam's intent was at the time,
9 as events are unfolding.

10 That's particularly relevant here, where we all now
11 know there has been a bankruptcy. We all know what happened on
12 November 11. There is a famous quote from a book which two
13 characters are discussing bankruptcy. One had gone into
14 bankruptcy. One asked the other: How did you go bankrupt?
15 And he responds: Gradually. Then suddenly.

16 That's what happened here. Remember that, in the
17 summer of 2022, Sam didn't know that November 11 would be their
18 last day, that both companies would file for bankruptcy then.
19 Rather, during this period he believed in good faith he was
20 dealing with a liquidity issue at Alameda, and that if he could
21 convert assets to cash and pay back its obligations to FTX and
22 its customers, he could address it. In good faith he didn't
23 believe the issue was one of insolvency but of liquidity.

24 And what he didn't know, had no reason to know, was
25 that there wasn't going to be a near future, that with the

1 continuing market crash and other events going on outside the
2 window, by earlier November there would be a run on the
3 exchange and a crash that ended in bankruptcy. So please keep
4 this in mind when you consider what Sam did in the summer of
5 2022, when you consider what his intent was.

6 And also the test of whether Sam acted in good faith
7 is not whether people suffered losses and looking back wished
8 they never got involved with FTX or Alameda. For sure, today
9 any customer, any investor, any lender would say that, and we
10 understand that. We understand why they would be upset they
11 suffered losses. Sam acknowledged that, and he acknowledged a
12 lot of people suffered losses and got hurt, and he felt
13 terrible about it.

14 But that's not the test. The test of intention is not
15 whether, looking back, Sam was a good manager, whether FTX took
16 too much risk, whether it did or didn't hedge enough, whether
17 they didn't have a fully built-out risk management function, or
18 whether he didn't act quickly enough. That's not for a
19 criminal case. The test is whether the government has carried
20 its heavy burden of proving beyond a reasonable doubt that Sam
21 acted with criminal intent and not in good faith, and it has
22 not.

23 Another thing I want to cover before we turn to the
24 chronology is Sam's own testimony. Very important. Now, Sam
25 testified before you in this case. And as a defendant in a

1 criminal case he had the right not to testify under our
2 Constitution, but he came forward to testify because he wanted
3 to tell you what happened. And I submit, it's hard to think of
4 a more stressful situation for a person than that.

5 And the government, we submit, was unfair today in how
6 they described it when they described his testimony. If Sam
7 gave a long answer to a question, they said it was too long.
8 Therefore, you shouldn't rely on it. If he gave a short answer
9 to a question, they said it was too short and you shouldn't
10 rely on it. If he gave an answer and he tried to explain it,
11 they said he's being evasive. Under that standard there was
12 apparently nothing he could say that would satisfy the
13 government's view of him and would make them not regard it as
14 proper.

15 It was a dynamic -- and I am going to talk about that
16 in a moment -- that was set up by the government, and you heard
17 it again today in summation. It's sort of a heads, I win;
18 tails, I lose dynamic in. No matter how Sam answered these
19 questions, we are now being told it was not credible.

20 What really happened? Sam testified, he did his best
21 to tell you what had happened and what he remembered. And
22 unlikely some of the government's witnesses, he was far from
23 polished. Remember, all the yups and the yeahs he gave in
24 response to questions. Remember the times when he had to stop
25 and close his eyes to think about the questions before he

1 answered. But he was himself. He was Sam. He told you when
2 he didn't remember things, when he didn't remember saying
3 things or doing things, even though he had sat here during the
4 trial, and he knew that other witnesses had claimed he did
5 them. If he was just trying to spin a new -- a lie, as the
6 government said, why would he do that? He didn't. If he
7 remembered something, he told you. If he didn't remember, he
8 told you as well.

9 And he also told you, by the way, that he couldn't
10 remember every single word he had said to every journalist or
11 reporter he had spoken to or everything in any written
12 submission to Congress, and we would submit it would be unfair
13 to require anyone to know that.

14 So when you consider his testimony, as part of your
15 deliberations, we ask that you consider it overall, as a whole,
16 and we submit that he did his best to remember and speak to
17 you, he set out his memory as accurately as he could, and he
18 told you what happened and, critically, what he believed in
19 good faith at the time.

20 Now, let me talk a little bit more about this dynamic
21 we have heard from the government, this sort of heads, I win;
22 tails, you lose dynamic. They spent a lot of time during the
23 case and today portraying Sam as a villain, as a criminal
24 mastermind. We heard today that, in addition to all the other
25 adjectives, he was apparently evil, arrogant, so forth. But

1 then when he did something that perhaps a criminal mastermind
2 wouldn't do, we heard, well, that doesn't matter, it's still
3 wrongful. It's a different kind of lie, different kind of
4 fraud.

5 An example. Sam testified before Congress three times
6 and submitted written testimony. Well, if he is the criminal
7 mastermind the government says he is, why in the world would he
8 go before Congress and subject himself to public questioning
9 when he doesn't have to, when he could be asked just about
10 anything by members of Congress, if the whole idea was that he
11 was running a secret scheme using Alameda to defraud customers.
12 The answer, he wouldn't.

13 Yet the government goes on about this and says, well,
14 no, no. On this one that's not what we mean. We mean he is
15 going before congress because -- not because he is trying to
16 hide things from them, because he's so clever, he is spinning a
17 tale where he is going to go an all of congress and tell a
18 series of lies to Congress that will match what he is saying
19 internally. Does that make any sense?

20 We heard a similar refrain from the government about
21 journalists. If the idea here was that Alameda -- FTX and
22 Alameda were part of a secret scheme, why in the world would
23 you go out and speak on Good Morning America, in front of
24 millions of people, when you have one of the toughest
25 questioners in the country questioning you and you are there

1 without an attorney, without an entourage, and you don't even
2 know the questions beforehand. You wouldn't.

3 Another example of this heads, I win; tails, you lose
4 approach to the evidence. We heard a lot in this case from the
5 government about what I would call risk analysis, and the basic
6 theme was Sam took too much risk. And I guess that by itself
7 is a crime. So whenever Sam was contrasted with Gary or Nishad
8 or Caroline or someone else, we were told, look at the risks,
9 look at the risks the other witnesses pointed out, and Sam
10 didn't agree with them. Sam decided to do something or not to
11 do something. He took too much risk. Therefore, he committed
12 a crime. And we saw that just in today's summation, when
13 Mr. Roos talked about an event at the end of 2021, when Sam was
14 considering whether to make a venture investment, an additional
15 venture investment, and he asked Caroline to do an analysis of
16 this, and he asked her to make certain assumptions. That's
17 called the 10 percentile scenario document we looked at.

18 Now, given how the government has approached this
19 case, we can be sure if Sam hadn't asked Caroline to do that,
20 we would be hearing today, look how reckless he is. He
21 considers a new investment of \$3 billion and doesn't do any
22 analysis, doesn't ask anyone to do any analysis.

23 Now he asks her to do an analysis, and he also asks
24 her to make very specific assumptions, pretty close to a
25 doomsday scenario, and on those assumptions she recommends

1 don't do it. He considers it, decides that we are not in
2 doomsday and decides to do it. Who is right? Who is wrong?
3 It doesn't matter. They each had business judgments of whether
4 to take that risk at the time, but Sam is not agreeing with
5 Caroline, happened to be Caroline in that case, but it doesn't
6 mean he was acting with criminal intent. It meant they had a
7 difference in business judgment.

8 One last example of this heads, I win; tails, you lose
9 formulation. We heard about September 2022, and I'll get to
10 that in the chronology. And you will recall one of the events
11 in September 2022 is that Sam sent a message to Gary and Nishad
12 about whether to continue with Alameda in business, and it's
13 the memo that's entitled: We Came, We Saw, We Researched. And
14 you heard Sam testify that he was putting it out there to start
15 a conversation about whether they should close Alameda. And
16 there is a lot of back and forth between Gary, Nishad, and Sam,
17 and later Caroline is added to the conversation, where there is
18 a different channel with her on it, and they ultimately decide
19 not to close Alameda. If Sam is a criminal mastermind and
20 Alameda is the key to the fraud to stealing customer money, why
21 would he be the one proposing to close it in the first place?
22 Why would he be the one starting this conversation? Answer:
23 He wouldn't. Because that's not what he was doing.

24 So with some of those thoughts in mind about how to
25 think about the evidence and how to think about what happened,

1 let me now turn to the first period we have identified, the
2 period from 2019 to 2021.

3 One thing I thought was just absolutely striking in
4 the government's summation today is not one word was mentioned
5 about the business that was built here, the business of
6 Alameda, the business of FTX. To hear the government tell it,
7 four people got together, decided to steal money using Alameda
8 as a vehicle, and went on and created these businesses, but
9 that's not what the evidence showed here. The evidence showed
10 that they were legitimate, valid, innovative businesses, and
11 they were legitimate, valid, innovative businesses in a new and
12 changing world, the crypto world.

13 You heard from Sam that he joined the crypto world
14 because it was new and growing rapidly and it offered an
15 opportunity for a math nerd like him. And you heard from him
16 that because it was new, it was a place where someone who
17 didn't have extensive business experience could start, and you
18 heard how Alameda started.

19 Maybe we could put up the next slide.

20 There is a whole story here of the building of a
21 legitimate business that the government never touched on, and
22 it's relevant because it goes to what Sam's intent was at the
23 time, and it's relevant because it shows how he thought later
24 about things like the code base, which we will talk about.

25 You heard from Sam that he worked at a company called

1 Jane Street, which I think is undisputed in this case was a
2 highly regarded trading firm. He left Jane Street and he
3 basically wanted to create in Alameda a Jane Street for crypto,
4 a crypto trading company, and he set out to do that.

5 And, by the way, one of the ideas he got from working
6 at Jane Street was that you could fund this company by taking
7 third-party loans because that's what he had seen at Jane
8 Street.

9 So throughout most of the period in question, this
10 period and later period, Alameda at any given time had 8, 9,
11 10, \$12 billion of third-party loans from companies like
12 Genesis and BlockFi. It had capital that it could use later on
13 to make expenditures.

14 And then you heard how, in 2018, Sam and Gary started
15 to build what would become FTX. The focus was to build a
16 futures exchange. That's why they named it FTX, which,
17 unsurprisingly, was short for futures exchange.

18 And Sam and Gary saw that the crypto industry didn't
19 have any sufficiently good exchanges for trading futures on
20 margin. Here is Sam's testimony of why he started the
21 business. This is not someone setting out to create a fraud.
22 This is Sam. We thought we might be able to build the best
23 product on the market in exchange that would combine the
24 elements that we thought were best for traditional financial
25 products with the elements we thought were best for the crypto

ecosystem, that it could move the ecosystem forward.

So this was not two guys, Sam and Gary, setting out to commit a fraud. They saw a legitimate, important financial opportunity, and they went for it.

Building FTX was an enormous undertaking. They worked all the time, and they had to build the exchange from scratch. They had no off-the-shelf solution to use, and they were productive and they were innovative.

Other exchanges required customers to have separate accounts for each of their cryptocurrencies. FTX came up with a way to allow customers to hold all their digital assets in one account and buy and sell them seamlessly.

FTX introduced cross margining, which we heard a lot about, which essentially meant that customers could trade at the same time across different currencies. If you owned Bitcoin and you owned Ethereum, you could trade at the same time. This was another major innovation.

Let's focus now on margin, margin trading. Understanding how margin trading worked on FTX is a key, we submit, to understanding what Sam did and, critically, what he thought at the time. FTX permitted customers to trade futures, it is called a futures exchange, and buy and borrow crypto on margin.

What did this mean? This meant that the way margin trading worked at FTX, customers would borrow other assets

1 posted to the exchange. These were on the exchange -- these
2 were assets on the exchange posted by other customers. There
3 was no other place for them to come from. That means that
4 every customer trading on margin is using and relying on assets
5 posted to the exchange by other customers. It wasn't that
6 there was just one limited pool that FTX had and that would
7 limit margin trading. Customers were always borrowing
8 essentially from each other.

9 And at FTX, the way it was set up, margin customers
10 could use the funds they borrowed from the exchange for any
11 purpose. At the time no one thought this was a problem because
12 the customers who borrowed funds on margin had to post
13 collateral to support their borrowing. And if a customer's
14 position lost money, which means risk of going down, the
15 collateral could be used to liquidate their position before it
16 went under water.

17 There is nothing wrongful about margin trading. There
18 is nothing wrongful about saying that in margin trading at
19 times one customer is borrowing from another customer. That's
20 how it works.

21 And you recall we had testimony from Dr. Pimbley, who
22 did an analysis of the data, and he concluded that 80 percent
23 of the assets on FTX were margined assets used in futures
24 trading. 80 percent are in this margin trading where customers
25 are always borrowing other customers' assets.

1 We can take that down.

2 Now, as FTX developed, Alameda did play some
3 legitimate business roles. Nothing wrong with that. I
4 mentioned that in our opening statement and the evidence
5 supported that.

6 To bring it full circle, if we can have the next
7 slide, Alameda had three legitimate business relationships with
8 FTX. It was a customer on the exchange, which it was permitted
9 to be. It was a market maker, and that was critical because
10 when FTX began, it was a new exchange. It didn't have any
11 other market makers. If it couldn't provide liquidity to its
12 customers, it wouldn't have grown at all. So Alameda stepped
13 in and performed that role. As well, Alameda served as a
14 payment agent. We have heard this in the evidence many times
15 already, that at the beginning FTX couldn't open its open bank
16 accounts and that funds were received in the Alameda account
17 and the North Dimension account or the North Dimension account,
18 and the government's own witnesses told you there was nothing
19 wrong with setting that up.

20 If we could look at the next slide.

21 Here is what a customer saw. If you want to open an
22 account with FTX, you are going to have to wire funds to
23 Silvergate Bank, to an account for the benefit of North
24 Dimension. There is nothing secret here. Customers were told
25 what was going on.

1 These roles that Alameda played in the early days, in
2 particular, were very important for FTX to get started and
3 launched as a business. Over time, as FTX became more
4 successful, other market makers came in. So by the end, by
5 2022, it was handling less than 5 percent of the market maker
6 volume. But in the beginning, when you needed liquidity and
7 when you needed customers, because without customers you
8 wouldn't have a business, this was an important role that
9 Alameda played, and there was nothing wrong with that.

10 Putting this all together, Sam and Gary and the others
11 created in just a few years a very successful crypto exchange.
12 Remember that Sam told you that he thought, when he started
13 FTX, his chance of succeeding was no better than 20 percent.
14 Yet, against all these odds, in just a few years they built two
15 highly successful innovative companies worth billions.

16 Let's go back to the slide about the time period.
17 Let's talk about FTX's growth and Alameda's growth because what
18 happened in this first period, particularly towards the end of
19 2021, is critical to understanding what was in Sam's mind as he
20 went into 2022, and in particular as we went into the crypto
21 winter in May and June of 2022.

22 Gary Wang testified that FTX in this period handled
23 \$15 billion in trades and 3 million in revenue per day and that
24 the exchange had 6 million accounts. That's Mr. Wang's
25 testimony at transcript 553.

1 And you learned that from the attorney, Can Sun, that
2 FTX was licensed in jurisdictions all over the world. That's
3 transcript at 1974.

4 And Zac Prince, the CEO of BlockFi, the lender BlockFi
5 who we will get to in a moment, he told you that of all the
6 exchanges that have been founded in this period, FTX, among the
7 hundreds, was one of the few that mattered.

8 Along the way FTX created and launched its own
9 exchange token called FTT. We heard a lot about FTT in this
10 case. And the government has suggested and argued that FTT was
11 somehow a fake token, not a real asset, not real collateral.

12 That's not what the evidence showed. The evidence
13 showed that, by the end of 2021, FTT had grown in value. It
14 was worth 30, 40, \$50 per token and it had its own market cap
15 of about \$10 billion. That's at transcript 2372.

16 The government wants to portray FTT as fraudulent, but
17 that's not what happened. It was traded on multiple exchanges,
18 not just on FTX. Other exchanges having nothing to do with FTX
19 traded it. It was accepted as collateral by sophisticated
20 third-party lenders, just like BlockFi. And Mr. Prince told
21 you in his testimony that FTT was one of the top
22 cryptocurrencies that he would accept as collateral for loans.

23 All this happened quickly, and FTX grew enormously.
24 You learned that, in the last investment round in 2021, and
25 early 2022, FTX International was valued at \$32 billion and FTX

1 US was valued at \$8 billion. And if you look -- bring the
2 timeline back up -- go back, again.

3 If you look at, starting in the middle of the page, on
4 July 2021, there is a series of fundraising rounds. There is a
5 series B round in July, then the B1 round, and then the C
6 round. What is that? That's outside investors investing in
7 FTX because they believed in the business, investing billions
8 of dollars as a valuation of 32 billion for FTX International.

9 Just to complete that, you heard from Ms. Ellison in
10 her testimony that even though she has certainly many negative
11 things to say about Sam, and we will get to that, and many
12 negative things to say about what happened, particularly in the
13 June to November time period, she told you that as of July --
14 year end July 2021, Alameda financials were not misleading. So
15 based on building the business, nonmisleading financials, it
16 did these three fund raisings at this high valuation.

17 You also learned toward the end of this period that
18 Alameda was also -- had also grown and was successful and it
19 was worth tens of billions of dollars in net-asset value.

20 And this means that as we came to the end of 2021, it
21 was Sam's view that, given this high valuation of both
22 companies, that Alameda could easily cover any of the expenses
23 or liabilities that it was reasonably likely to incur, either
24 through its own value, its own revenue and profits, or its
25 third-party loans.

1 And he also came into the year with the view that FTX
2 was highly valuable, and he could sell its equity, if he needed
3 to, to generate liquidity, and he personally also had a high
4 value, was by that point a millionaire, billionaire, and he
5 could put his personal wealth to use to resolve any issues on
6 the exchange if necessary. That's what he believed as we came
7 into the year.

8 Your Honor, I'm at the 45-minute mark.

9 THE COURT: OK. Is this a convenient spot?

10 MR. COHEN: Yes.

11 THE COURT: We will take 15 minutes.

12 (Recess)

13 THE COURT: Let's get the jury.

14 (Jury present)

15 THE COURT: The defendant and the jurors all are
16 present, as they have been throughout.

17 You may be seated, folks.

18 Mr. Cohen, you can proceed as soon as the jury is all
19 seated.

20 MR. COHEN: Thank you, your Honor.

21 Ladies and gentlemen, when we broke I was just about
22 to talk about the spending, some of the spending that was done
23 by FTX and Alameda. And, again, this is another example, we
24 submit, of the government trying to show you the movie of Sam
25 the villain. But the business expenses that were incurred and

1 paid for were entirely normal for a company of FTX's size and
2 complexity and its business model, as well as Alameda, and this
3 is perhaps best encapsulated by the evidence we all reviewed
4 together about sponsorships.

5 This is a really good example of the government trying
6 to prove its case by hindsight. You recall Sam told you about
7 a sponsorship that FTX did of the arena in Miami, the FTX
8 Arena. The government in its presentation said, aha, this is a
9 perfect example of what we are seeing, ladies and gentlemen.
10 FTX bought that with customer funds.

11 But, in fact, Sam testified, and the evidence about
12 the world going into 2021 was that FTX had a multibillion
13 dollar valuation, it had a billion dollars a year in revenue,
14 and certainly had more than enough assets and revenues and
15 profits to pay for such expenses.

16 So the government said, aha, this is a great example
17 of using the fiat@ funds improperly. Of course the evidence in
18 the case was clear that not Sam, not any of the others knew
19 about the fiat@ issues until mid 2022. Then the government
20 says, well, it doesn't matter. This is yet another example of
21 Sam being reckless in his spending or spending too much, and
22 that's what Nishad testified to when the government went
23 through this with him.

24 You saw that when they went through the actual facts
25 and the evidence of what went on, the government had Nishad

1 tell you that the total deal for all sponsorships was 1.13
2 billion for one year. That's transcript at 1334, on Government
3 Exhibit 343 at row 72.

4 But it turns out that wasn't true. FTX never paid
5 that amount. The sponsorship wasn't for one year. It was for
6 19 years, as shown on the chart. The government -- and FTX was
7 going to pay Miami, the arena, over a period of 19 years, and
8 in the first year for the naming rights it was going to pay
9 about 19 million or 14 million. Now, certainly that's a lot of
10 money. We are not saying it's not. But relative to the size
11 of FTX and relative to the size of its marketing expense, it
12 was a reasonable investment, and Sam told you that FTX spent
13 about 10 to 20 percent of its revenue on marketing, which is
14 less than he believed their competitors spent. This was no
15 different than having a field in New York being called Citi
16 Field or suites at Yankee Stadium called Delta Suites. There
17 was no evidence of a crime.

18 We also heard a lot about the properties in the
19 Bahamas that were purchased. But the real issue is, again, the
20 why. Why did Sam purchase these properties? Why did FTX
21 purchase them? Sam was clear on this in his testimony. The
22 Bahamas real estate was corporate housing for FTX employees.
23 It had to convince skilled professionals to uproot their lives
24 and move their family and friends to the Bahamas to work for
25 FTX.

1 He saw these properties as a valid business expense
2 for FTX. It's one thing to look for a resort in the Bahamas
3 for a week or weekend, finding long-term housing that appeals
4 to workers who could otherwise be at Google or Facebook is
5 quite another, and no one in FTX thought the company's
6 investment in the real estate was a problem at the time. No
7 one refused to live in the company-owned housing despite their
8 protests after the fact.

9 In fact, you heard from Can Sun about this. We will
10 talk about him later as well. Remember, the government
11 referred to him. He came on to be the general counsel of FTX.
12 Now, we will talk about it later. His testimony was, shall we
13 say, sculpted. Very careful. This was someone who had a
14 Ph.D. from Princeton, law degree from Yale, who had worked for
15 one of the leading law firms in the world, was admitted in New
16 York, was the general counsel of FTX but told you he wasn't
17 even sure if that was the senior legal position there.

18 And later we will see he was very, very careful in
19 what he told us about what he thought happened with Sam in
20 later events. He even said he was coming just to tell us what
21 happened and didn't bother to mention that he had received a
22 nonprosecution agreement which he had signed two days before he
23 testified.

24 Even someone who was as careful as Can Sun admitted
25 that he received a \$2.3 million loan. What was the purpose?

1 It was part of a management incentive program to incentivize
2 employees to move to the Bahamas. Did he take the loan? Sure,
3 he did. He didn't think there was anything wrong with it. It
4 was a valid corporate expense.

5 And you heard a lot about the penthouse apartment that
6 Sam lived in with nine other people, including Gary and Nishad
7 and for a time Caroline. You will recall during the
8 questioning when a witness would refer to the apartment, the
9 government would interrupt them and say: You mean the \$30
10 million apartment. The apartment. You mean the \$30 million
11 apartment. Until the witness would get it and say, as I meant,
12 the \$30 million apartment. What was that all about? To make
13 you think, who is this guy, living in a \$30 million apartment.
14 What kind of nerve does he have. Make you dislike him more.
15 But, again, given that FTX at the time was a multibillion
16 dollar company and that Sam and the others wanted to live
17 together and work together, and they were the senior leadership
18 of the company, it was a valid business expense.

19 And you heard I asked Nishad about it, and I pointed
20 out that the ten people living in the apartment at the time
21 were either millionaires or billionaires and asked him if he
22 thought that was an acceptable expenditure on a relative basis.
23 He told you, well, I can't say how a billionaire is supposed to
24 live, which is frankly not an answer.

25 You heard today about the private plane. Same idea.

1 Sam flew in private planes. Sam told you why he did that. He
2 thought it was a valid business expense, given the size of the
3 company and his need to get to places like Washington, D.C.,
4 where there weren't that many flights available on a given day;
5 again, a valid business expense for a company of the size and
6 complexity of FTX.

7 You heard a lot about venture investments and loans
8 that were made by Alameda to Sam or Gary and Nishad to fund the
9 venture investments. But, again, Sam told you he believed that
10 Alameda, based upon its capital base, its third-party loans,
11 its profits and so on, had the basis to make those loans and in
12 fact they were -- if we go to the next slide -- they were
13 documented by promissory notes.

14 Let's talk about another thing that counsel mentioned
15 this morning that sort of sets the backdrop as we come into the
16 period in May of 2022, the terms of service. You saw -- if we
17 could pull it up -- a terms of service that was dated May 13,
18 2022 and issued by FTX.

19 Now, the government's case, when it comes to the fiat@
20 account, depends on FTX not being allowed to borrow assets from
21 FTX customer fiat deposits. That's what it depends on.
22 Because if they could do that, that part of their case falls
23 away.

24 So what did we get here over four weeks? Witness
25 after witness comes before you, and conveniently none of them

1 happen to read the terms of service. The government didn't
2 want to focus you on that. Why? Again, the only witness who
3 said he had read the terms of service was Can Sun, the general
4 counsel who had helped to draft it. Even though he was very
5 careful in what he told you, he admitted that nowhere do the
6 terms of service contain language that prevents FTX from
7 loaning customer fiat deposits to Alameda or anyone else.

8 Just a quick point on the venture capital investments.
9 Not only could Alameda have funded those from the capital base
10 it had from third-party loans, you heard the government's own
11 witness, Professor Easton, testify that, in 2021, Alameda had
12 borrowed \$15 billion from third-party lenders, again confirming
13 this point that there were more than ample funds to make the
14 venture investments.

15 Given what the world looked like to Sam and the
16 others, as they moved from 2021 into 2022, why would he think
17 that money owed to customers was ever at significant risk when
18 the assets he had access to were so much greater than the debts
19 that needed to be paid out? He didn't, and he wouldn't.

20 A few more key points for this period before we move
21 on. We have heard a lot of testimony about the difference
22 between the info@ account on FTX and the fiat@ account.

23 We could pull up that slide.

24 I just want to briefly spend some time on this, ladies
25 and gentlemen, because it affects how we think about what

1 happened later on. Two different accounts, often in the
2 government's presentation they get mushed together, but they
3 are actually distinct and the distinction is important. If you
4 look to the right-hand side, info@ Alameda was the trading
5 account that Alameda had on the FTX exchange where it was
6 trading for its own account. If you look at the visibility on
7 the admin user dashboard at the bottom, when Sam was the CEO of
8 FTX, no longer running Alameda, he would use that admin
9 dashboard, as others would, to check accounts of all customers,
10 including Alameda, and what he could see was what was in the
11 info@ Alameda account, the trading account. On the left-hand
12 side is the FTX -- fiat@FTX.com account. That was very
13 different. It was a tracking account. It was supposed to
14 track FTX customer deposits and withdrawals of fiat or dollar,
15 currency, so forth, via Alameda bank accounts, and it wasn't
16 visible from the admin user dashboard.

17 When Sam would check, and he told you this, the info@
18 account at the end of 2021 going into 2022, what did he see?
19 He saw that Alameda had borrows, loans, of 2 billion because
20 Alameda did trade on futures, which allows for margin, and some
21 of the subaccounts were margin accounts. But that those
22 borrows were covered by many more assets than \$2 billion. No
23 reason for him to think there was a problem.

24 And, in addition, toward the end of 2021 and frankly
25 going into 2022, all the way to November, at no point was there

1 a time when a customer wanted to withdraw funds from the
2 exchange where he or she could not. Gary told you that no
3 customer waited longer than a day for a withdrawal prior to
4 November 2022, that all withdrawal requests were honored.
5 That's Gary's testimony at page 504. Again, this gave Sam no
6 reason to think anything wrong was happening in Alameda's
7 accounts or how they were being tracked in FTX's systems or
8 that customers were not being able to receive withdrawals if
9 they wanted to.

10 Now let's turn to a topic that counsel spent a lot of
11 time on today, a lot of time, and during this trial. That's
12 the codes and the code base. The government's theory is, these
13 codes were secret and that Sam, in perhaps one of his most
14 villainous acts, secretly directed Gary and Nishad to put these
15 codes in place. I think the government's word was so that he
16 could create a back door to steal customer money. That's what
17 we were told over and over and over again.

18 But the evidence was different. The evidence was the
19 opposite. We found out that the codes were not secret, that in
20 fact anyone who had access to the FTX code base could see them.

21 So if you look at this slide, this we went over with
22 Nishad, and it says: Coding features were visible to anyone
23 with access to the code base.

24 If you look at the bottom, here is what's called a
25 code commit that Nishad wrote that says to other developers who

1 looked at this: Be careful not to liquidate PMM, which we
2 learned was primary market maker, which at the time was
3 Alameda, clean up messages.

4 We asked Nishad about this. We asked about visibility
5 in the first place. And here was the exchange. Based on your
6 experience as head of engineering at FTX, did you have an
7 understanding of who might access the code commits we were just
8 looking at? They were available to the whole company in Slack,
9 if nothing else. There were Slack logs of all the messages.

10 We submit this is the opposite of secret. If these
11 coding rights were actually intended to serve as tools to
12 steal, it makes no sense that the group of people in a company
13 with hundreds of employees would have access to them. It makes
14 no sense. The whole idea of a conspiracy is that you are
15 trying to keep things secret so you won't be detected. There
16 was nothing about this code base and the commits that were kept
17 secret.

18 Let's talk for a moment about the allow-negative
19 function that counsel spent a lot of time on. The government
20 claims that it was set up as another way to siphon funds, but,
21 again, that is not the evidence in the case. You heard from
22 both Gary and Nishad, and the quotes are up here, that they
23 were set up originally, Allow Negative, for a few other
24 bookkeeping accounts on FTX, said Gary, and for accounting
25 oriented accounts to go negative, said Nishad. Again, this

1 wasn't set up to be some back door to abuse anything.

2 We can take that down.

3 You heard a lot today and during the trial about the
4 line of credit. What you heard was that the government kept
5 saying one of the reasons we know Sam was a fraudster is, he
6 directed Gary and Nishad to put up the line of credit to 65
7 billion. Look at that. That's bigger than anyone else in the
8 company. That's way bigger than anyone else. But they never
9 asked the why question. They never went into the fact that in
10 fact, in practice, only about 3 billion of the line of credit
11 was used, not 65 billion, and that it had been raised because
12 of the fact that when Alameda was the main market maker, it had
13 to put out many, many open orders during the day, and in order
14 to be able to put those orders out, it needed more collateral.

15 So the letter of credit was used to take its place,
16 and, in response to that, Gary raised the limit several times
17 until, finally, he decided to raise it to a level where it
18 wouldn't be hit again, just move the parameters out. That's
19 his testimony at 397 and Nishad's testimony at 1554. This was
20 all done in response to specific issues, to business issues,
21 and done to help customers, not to hurt them.

22 In a related vein, let's talk about this complicated
23 word, auto-deleveraging event. You heard both Sam and Nishad
24 testify about this. What was it all about?

25 When liquidations were happening on FTX, Alameda and

1 other large traders would step in as backstop liquidity
2 providers to close out the insolvent accounts and prevent
3 further harm to the exchange or customers. An auto
4 deleveraging event happened when FTX ran out of backstop
5 liquidity capacity. In other words, first, they went to the
6 collateral in the customer account. If that didn't work, the
7 risk engine went to the backstop liquidity provider. And if
8 that didn't work, we had an auto-deleveraging event where the
9 engine would start to pull in collateral from any customer's
10 account who had authorized margin trading. And FTX wanted to
11 avoid that because customer A didn't want to have his or her
12 funds used to cover losses from customer B if it could be
13 avoided.

14 Sam told you about an event that happened in 2020
15 where due to the servers being overworked, it ran -- it was
16 running behind, and there was a threat not just of the backstop
17 liquidity providers being liquidated but Alameda itself being
18 liquidated, and they concluded this would be really bad for its
19 role as a market maker. It would hurt customers, so they put
20 in a provision to delay that liquidation.

21 (Continued on next page)

22

23

24

25

1 MR. COHEN: Again, not out of some intent to steal,
2 not out of some nefarious intent.

3 And before we take that down, I just put up Government
4 Exhibit 1617, which is before you, just to show the letter of
5 credit actual usage in the pre-October 2022 period.

6 So that takes us to the end of this first period of
7 2019 to 2021.

8 And I also want to point out something else as we came
9 to the end of this period.

10 Sam's good faith, as I mentioned, is a defense to all
11 the charges against him. And no witness who testified about
12 this period has testified that Sam ever told them that he'd set
13 up FTX to steal funds or allowed anyone to install secret
14 code-based features to steal funds, or told them that he was
15 using this as a way to steal funds from the exchange. The
16 testimony counsel pointed to earlier today from Caroline was
17 simply about the ability to borrow on the exchange; it wasn't
18 some secret code base to steal from customers.

19 So now let's move to the second period.

20 Put up the next slide, please.

21 Okay. I'm going to talk about the fiat bug, which we
22 all spent a lot of time on this case, but again, first let me
23 set the stage. In May and June of 2022, if you look outside
24 your window, if you're in the crypto world, you see a storm.
25 Companies are going out of business. There's stress

1 everywhere. Bitcoin, the leading indicator and the hallmark,
2 it has dropped by 70 percent. And it's against this backdrop
3 that the sequence around the bug plays out. And what happened
4 as a result of this is that a group of people began to realize
5 that there was a fiat@ bug and there was a fiat@ liability,
6 which I'll talk about in a moment.

7 So again, what happens? Well, we learned from the
8 evidence that in July, the year before, a bug had been
9 introduced inadvertently into the system. And the effect of
10 the bug was it caused an error that caused the fiat@ accounting
11 entry to appear as if it was 8 billion larger than it was. The
12 upshot of this was it looked like Alameda owed FTX \$8 billion
13 more than it really did. So that's right here, what was going
14 on.

15 And in fact, later in 2021, Gary, Nishad, and Adam
16 Yedidia complained about the bug, and at the time, it was only
17 causing a \$500 million impact. Now to most of us that's a lot
18 of money, but at the time, you heard the testimony from Nishad
19 that Gary was relaxed, not stressed about this. This was
20 apparently on everyone's list of something that needed to be
21 attended to and hadn't yet been attended to. And so it doesn't
22 go—it doesn't get corrected or fixed.

23 Six months go forward and now in June 2022, the stage
24 is set when Caroline comes to the FTX office where Sam, Gary,
25 and Nishad are working, and she tells Sam she thinks Alameda

1 might be insolvent, and that it also will need to repay its
2 lenders. And I want you to stop and really think about this,
3 because it's a very important moment for an issue we submit
4 hangs over the whole case. And think about what it means for
5 not having a fully built out risk management system. The CEO
6 of Alameda wasn't aware that there was a bug in the system for
7 six months after it had already been discovered, and she woke
8 up one day and believed that her company, which previously had
9 a NAV of 8 to 10 billion, was now bankrupt, overnight. How
10 could that happen? Not through Caroline's fault, not through
11 Sam's fault, not through anyone's fault. It resulted from FTX
12 lacking a fully built out accounting risk management system.
13 Ask yourself, if they had had a full-time chief risk officer,
14 would that person have let it happen? And what's even more
15 remarkable about this is but for the seemingly accidental
16 discovery of the bug in June, we don't know when Alameda or Sam
17 or the others would eventually have appreciated the scope of
18 the fiat@ liability, or taken steps to address the underlying
19 causes.

20 So coming back to this, to the time line, when Sam
21 heard that Alameda might be bankrupt and needed to repay
22 lenders, he said—and he testified to this to you—that didn't
23 sound right to him. And he asked Caroline, *How confident are*
24 *you in this, that Alameda is insolvent?* And she responded, up
25 front, *Not very confident.*

1 So what did they do next? They bring in Gary, who's
2 the chief technology officer at FTX, Nishad, who's the number
3 two technology person, and then other developers, Adam Yedidia,
4 Andrea Lincoln, and other developers, to get into the issue and
5 figure out what happened. And again, if what's really going on
6 here is that this "inner circle" is running a conspiracy, the
7 last thing they would do when this bug came to the fore is
8 bring in all these other developers to look at it.

9 After about an hour, or after about two or three hours
10 of work, the team led by Gary determines that the \$8 billion
11 liability isn't real and there was a bug in the system. And
12 everyone's relieved. You thought that Alameda was insolvent
13 and now you find out it's back to being worth 8 to 10 billion
14 in NAV.

15 And this led to the other issue we talked about,
16 repayment of the loans. Now when Caroline first—Sam told you
17 that when Caroline first came to him about concern about
18 insolvency, she raised another valid concern, can we repay our
19 lenders, should we repay our lenders? And Sam told you that
20 once he understood that the bug was fixed and believed that the
21 NAV was back to 8 to 10 billion, which, again, was consistent
22 with what he saw on the info@ account, that it was—he was fine
23 with repaying the lenders. And that payment was made.

24 Now there is a problem with some of the testimony
25 about that payment, and it has to do with how it was done and

1 the scale. And you should consider that when you evaluate the
2 whole sequence. Caroline testified to you that what happened
3 was, Alameda "would have to take the money from our line of
4 credit to pay the lenders." And that's at transcript page 763.
5 And I asked her, *Well, if that's true, if the lenders were*
6 *being repaid off the line of credit, wouldn't the amount of the*
7 *line of credit go up?* She said, *Yes, it would.* And I said,
8 *How much did it go up by? Oh, 5 to 10 billion.*

9 But when you look at the actual data that was pulled
10 by Dr. Pimbley—and that's Defendant's Exhibit 617—you see
11 that in fact the line of credit did not go up during the period
12 when the loans were being repaid. In fact, it went down for
13 much of the period. It repaid some of its line of credit,
14 Alameda repaid some of its line of credit usage but not on the
15 order of the 5 to 10 billion that Caroline claims. She was
16 just mistaken in that.

17 And during that same sequence, we heard a lot from the
18 government—we heard about it today—about a spreadsheet of
19 seven alternative balance sheets that Caroline prepared. And
20 we heard, this is one of the most nefarious things Sam did. He
21 directed Caroline to prepare multiple spreadsheets to send to
22 the lenders, and the idea was, let's pick the one that's going
23 to be the most misleading and send it to the lenders. But
24 again, we submit that the evidence didn't support this
25 interpretation. Sam told you he reviewed the spreadsheet. The

1 government made a big deal today about, oh, the metadata showed
2 that he didn't. He said he did, but he only remembered
3 reviewing one of the—one of the balance sheets. And that's
4 actually consistent with Caroline's testimony, where she said
5 at page 1070 of the transcript that she only discussed some of
6 them with him. And if you think about it, Sam believed—we had
7 gone from thinking Alameda was oh, my god insolvent to being
8 worth 8 to 10 billion. He certainly was now okay repaying the
9 lenders. He received the balance sheet that he looked at,
10 which looked like the ones he had seen many times before from
11 Caroline, and given all the other things he was doing, working
12 12 to 22 hours a day, dealing with 60,000 emails in his inbox,
13 being a member of hundreds of Signal groups, it seemed
14 reasonable to rely on the spreadsheet he had been given by
15 Caroline.

16 And two other things about this. Ask yourself, if
17 you're a fraudster, why would you repay the lenders? Why don't
18 you just keep the money and run? That's a billion dollars,
19 even on the reduced scale. You wouldn't. If you were a
20 fraudster, why would you repay the lenders and give them a
21 false balance sheet? It doesn't make any sense.

22 And there's a third layer that's really important,
23 perhaps the most important layer for this sequence, that, in
24 fairness to Caroline, she couldn't know about. Sam was having
25 separate discussions with the leadership of all the lenders,

1 BlockFi, Zac Prince, Genesis, Voyager. At the same time as
2 these loans were being repaid, they were reaching out to Sam in
3 a separate discussion. Their other employees were talking to
4 Caroline about the loans at issue, but these CEOs were reaching
5 out to Sam about the following: Hey, we're in the crypto
6 winter too, hey, we're having problems, you think FTX could
7 loan us some money? You think FTX could invest some money in
8 us to help us get through? And in fact, you heard that FTX
9 wound up making a loan, and with the possibility of an
10 investment, to BlockFi. You heard that both from Sam and from
11 Zac Prince, the CEO. And ask yourself, if you were making a
12 loan to a company that you're going to maybe buy eventually,
13 why in the world would you spend time sending it a false
14 balance sheet? You wouldn't.

15 So coming back to the aftermath of the bug, once the
16 bug is discovered, what do Sam and the others do? Well, we
17 submit they sort of act sensibly, and Sam does as well. First
18 thing he says is, you know, we got to fix this. We got to make
19 sure we don't have another situation where we're off by
20 \$8 billion in our account. So he asked the team that ends up
21 being led by Nishad and Adam Yedidia to fix the bug. And they
22 do. It takes a few weeks.

23 What's the other thing he does? Well, if you'd call
24 up slide 26.

25 He says, it's not just the bug, we really need to fix

1 our accounting, because we can't have this where we're off by
2 so much, and whether you—this is now looking at it from FTX's
3 point of view. We can't have a customer like Alameda, large
4 customer, where the accounting is so far off. And he went over
5 with you his live issues for September 27, and his list of
6 priorities, which we looked at earlier this week. Each of
7 these priorities—there's this list of 16. Each of them
8 involves or collectively they involve billions of dollars. And
9 what does he call out as something that's really important?
10 Let's get the accounting right on FTX. And he had asked Andrea
11 Lincoln, one of the developers, to work on that, with an ETA of
12 October 15th. So that's something else that you would expect a
13 CEO to do, to want to do. Let's get the accounting in shape.

14 And coming out of that sequence, Sam told you that for
15 the first time he learns that separate and apart from the bug,
16 okay—take that 8 billion, get it off the table, separate and
17 apart from that—he learns through this sequence, through
18 discussions, that there's another liability that Alameda owes,
19 that's in the neighborhood of 8 to 10 billion.

20 And again, not just Sam, but no one testified that
21 they knew about this liability, which we've come to learn was
22 related to the fiat@ account, before June 2022. In fact,
23 Caroline told you that during her time as CEO of Alameda,
24 before that, she had been seeing what she called otherwise
25 confusing decreases in Alameda's assets from the bug. She

1 didn't quite know what was going on with this liability. And
2 Sam told you he certainly didn't know in and around this time
3 in June that there was this big liability, 8 to 10 billion.
4 The government makes it sound like he's fighting with the
5 others about knowing this. He wasn't. But what he didn't put
6 together until September or October, which is, by the way, when
7 Nishad put it together, that Alameda had this additional
8 8 billion, \$10 billion liability and it was associated with the
9 fiat@ account.

10 And as Sam is piecing things together and thinking
11 about it, what does he think? He thinks—and the government
12 was critical of this, but frankly, we think this is how many
13 CEOs would think—he thinks, well, it is what it is. We don't
14 have the situation. We had a messed up accounting system. We
15 had a messed up risk management system. And now we have a very
16 big liability that we didn't know about that we have to
17 address. And he spends—and he thinks about it as a liquidity
18 issue. Does Alameda have assets on the exchange or off the
19 exchange to take care of it over time? Are there assets at
20 FTX, can he use his equity, can he use other assets. And we
21 would expect that's a reasonable way for him to look at it as
22 the CEO at the time. And this isn't what Mr. Roos said. This
23 isn't saying, oh, things will work out all right at the end.
24 This is how he's thinking about it at the time, and it's a
25 reasonable way.

1 And let's turn now to September. This is another
2 point where the government says, oh, there's this "aha" moment
3 about Sam proposing shutting down Alameda, and I talked about
4 that earlier in my summation, where Sam sends the memo "We
5 Came, We Saw, We Researched," where he proposes shutting it
6 down. And as I mentioned before—I won't belabor it here—if
7 he really thought Alameda was the key to his fraud, if this was
8 the engine to keep stealing money from customers, the last
9 thing he would do would be to propose shutting it down. And
10 there's a discussion between Caroline, Gary, Nishad, and Sam
11 where they decide not to shut it down and they move forward.
12 And we think, and we submit, that what the evidence showed is
13 that each of them came to different realizations at different
14 points in time. Caroline told you she came to her realizations
15 about the impact of the fiat liability in June and July.
16 Nishad told you he came to that realization in September. Gary
17 was somewhere in between. Sam told you around September and
18 October. Does that make any of them right or wrong, for not
19 being consistent with each other? No. That's how they looked
20 at it from a business point of view, from a business judgment
21 point of view, of people trying to figure out what had
22 happened, what this liability was, how do we deal with it, how
23 do we get our arms around it.

24 Which brings us now to November 2022. And when we
25 talk about November 2022—and there's been a lot of testimony

1 and evidence about this in this case—I want to break it into
2 two categories: what happened; and what were Sam's statements
3 during November? And we're talking about those 11 days,
4 November 1 to November 11. And I told you in opening—and I
5 think I was borne out by this—that a lot happened in those 11
6 days. Things were literally changing moment by moment. And
7 that affects what Sam thinks moment to moment, that affects how
8 he reacts moment to moment, and we submit as he reacts moment
9 to moment, his state of mind is somebody who's acting in good
10 faith and doing the best he can under what are very, very
11 difficult circumstances.

12 So the sequence begins on November 2nd, when an
13 article is leaked by CoinDesk, which is a leading crypto
14 publication, that leaks—an article appears that leaks
15 Alameda's balance sheet. Now the article has the effect of
16 causing some of FTX customers to start withdrawing assets from
17 the exchange, which ultimately, toward the end of the week,
18 sets off what Sam called a run on the exchange. In his view,
19 the run was all the customers on the exchange or almost all of
20 them suddenly want to be taken off the exchange. And what's
21 his reaction when it comes out, when the article comes out?
22 Well, they talk about how to address it. A tweet is put up to
23 address it, and things move forward.

24 What happens then? On November 6th, there's a tweet
25 from CZ, the CEO of Binance we all heard so much about. And he

1 tweets that he planned to sell his substantial FTT holdings
2 because the balance sheet that had been leaked had showed that
3 Alameda owned a lot of FTT. And this has a more dramatic
4 effect. Because now this is a disclosure not about how the
5 market is going in general, how the crypto market is declining
6 in general; this is a disclosure that affects FTT specifically
7 and therefore affects Alameda, which owns a lot of FTT. And
8 now you heard right after that tweet on November 6th, Gary
9 testified that withdrawals skyrocketed. That's at page 568 of
10 Gary's testimony and 567. He told you that prior to
11 November 6th, a typical withdrawal volume for FTX was 5 to
12 10 million an hour, but on November 6, FTX starts getting
13 withdrawal requests of over a hundred million dollars an hour,
14 which amounts to over a billion dollars in the first day, which
15 is—I think Sam also told you.

16 Now this is becoming an unprecedented situation. So
17 in this crazy situation, with the storm going on outside in the
18 general market but now a specific storm about FTT and about
19 Alameda and the value going down, we submit Sam acts
20 appropriately, as best he can. What did Caroline say about
21 what Sam did? She said that Sam "said to liquidate Alameda's
22 positions and send the money to FTX." That's at page 893. And
23 that is a sensible thing for a CEO to do during that period.
24 Sam also continues with efforts to raise capital because he's
25 thinking, I still have this liquidity issue, Alameda's NAV is

1 positive but things are getting tight, and I'm going to need to
2 raise capital. And in the course of raising, seeking to raise
3 capital, Sam reached out to a number of lenders—excuse
4 me—investors, and he asked others on the team to reach out to
5 a number of investors. And one of those lenders—excuse
6 me—investors that they reached out to was a company called
7 Apollo, which is a leading investment firm in New York, and you
8 heard a lot about that.

9 Now this is where we bring Can Sun back into the
10 picture. Sam had reached out to Apollo, investments were
11 handled by—investor relations, you heard, were handled by Sam
12 and a fellow named Ramnik Arora, who is there in the Bahamas
13 also working on this, and Can told you that he learned that Sam
14 had sent a balance sheet to Alameda—to Apollo, and the balance
15 sheet he sent reflected the fiat@ liability. It's the opposite
16 of seeking to deceive Apollo. He sent them the balance sheet
17 that was now updated to show the effect of the fiat@ liability.
18 Even Can admitted that. And then there was a conversation that
19 Sam was going to have with Apollo where they'd asked questions
20 about how could things have happened from a legal and
21 compliance perception, and Can does research and he goes over
22 it with Sam, and the net of it is, based on what we found so
23 far as regards the fiat@ liability, we don't have an
24 explanation from a legal or compliance point of view. And Sam,
25 in his style, says, *Yup, okay, that means I can't tell that to*

Apollo. And he doesn't. And he's on the call with Apollo right after speaking with Can, and Can is not on the call.

What else happens during that week? Well, on November 9th, there's an all hands meeting that we heard so much about that Caroline has for Alameda.

And if we could call up slide 29.

And let me set the stage for this, ladies and gentlemen. This was a regularly scheduled meeting. Sam is not going to attend. It's for Alameda people only. And you saw this exhibit in evidence that Caroline reaches out to Sam and others about how to approach the meeting. And she says:

"Thinking about what to tell people at Alameda all hands."

"Right now I'm thinking a vibe of 'Alameda is probably going to wind down, if you don't want to stay or want to take some time off no pressure, if you do want to help with stuff like making sure our lenders get repaid it's super appreciated'"

"Does that seem right?"

And Sam says, over here, "and maybe something about there being a future of some sort for those who are excited but that you can't know for sure what it is."

Well, how did the government present this to you? They presented it in two ways. Sort of, again, the "heads I win, tails you lose" way. First they said, Aha, you see, this

1 meeting was really Caroline confessing that they'd all been
2 committing crimes for the last few years, three, four years.
3 But if you read the setup to this meeting that Sam's involved
4 in, he's not at the meeting, this is not written by someone
5 who's planning to confess.

6 The second alternative, government says, well, if you
7 don't like that one, here's another one. This is part of a
8 coverup. It's a way to get people to keep working without
9 telling them anything about what's happening. It's about a
10 vibe. We submit this doesn't support that interpretation
11 either. And in fact, after the meeting, Caroline reaches back
12 out to the same group and she said she "thought it had gone
13 well." And that's the tape you listened to. Neither excerpt
14 is consistent with someone who is covering anything up, who's
15 doing anything at the direction of Sam.

16 Just to complete that week, Sam is reaching out
17 wherever he can to raise capital. No question they need
18 capital. Alameda is very tight. Sam still believes until the
19 very end of the week that it has a liquidity issue, not a
20 solvency issue, although by the end of the week, that comes.

21 So he even reaches back out to Binance, FTX's
22 bitterest rival, his own personal rival, and he says, hey, you
23 have capital, will you do a deal with us, and Binance signs a
24 letter of intent with them. And there's negotiations over a
25 frenetic day about, hey, maybe we can sell FTX to Binance. And

1 just to drill down on what that would mean, that would mean
2 selling the equity that Sam owned in FTX to Binance so that
3 funds could come in to pay expenses, to pay lenders, investors,
4 and customers. So Sam is, as he always was, willing to give up
5 everything he had in order to take in the capital if he could
6 and save the situation. So that's what happens during that
7 week.

8 Now let me come to the second part I want to talk to
9 you about the week, which is, what did Sam say during the
10 November crisis? Now the government, again, because in their
11 movie Sam's a villain, or mega villain, says that all week he's
12 just sort of wheeling and dealing, he's lying to his employees,
13 he's lying to the outside world, he's doing anything he can to
14 hold on to the company and keep people from making withdrawals,
15 even though they've had billions of dollars of withdrawals, all
16 of which had been paid. And then when we look at the actual
17 evidence from that period, we submit it doesn't support what
18 the government says.

19 If we could pull up slide 30.

20 This was the November 6th tweet regarding the leaked
21 balance sheet. And there was testimony—and you saw an earlier
22 draft of it. This was something that Caroline worked on with
23 Sam and others. We ought to put out a tweet to respond to the
24 CoinDesk story. We ought to tell the market what we think
25 happened.

1 And the tweet makes three points. First, at the top,
2 Caroline says—and certainly Sam is on board with this—"A few
3 notes on the balance sheet info that has been circulating
4 recently," meaning the leaked balance sheet. "That specific
5 balance sheet is for a subset of our corporate entities, we
6 have greater than 10 billion of assets that aren't reflected
7 there." And is that accurate? It certainly is. If you look
8 at the corporate entities, which include Alameda's assets on
9 and off the exchange, FTX's equity and other assets, it's an
10 accurate statement.

11 What does Caroline next say? "The balance sheet
12 breaks out a few of our biggest long positions." Long is where
13 you've bought something. "We obviously have hedges that aren't
14 listed." Is that accurate? It certainly is. You heard a lot
15 of testimony, not just from Sam but from Caroline and others,
16 about there was a sequence going through the year of putting on
17 hedges, talking about putting them on, and for the first part
18 of the year no hedges were put on, but finally, by this period,
19 at the end of November—in the middle of November, hedges had
20 been put on. Now they don't work as well as they should have.
21 By the way, that's not anyone's fault. We're not faulting
22 Caroline, we're not faulting Sam. The hedges they finally put
23 on were to the general market, if the general market was down.
24 The problem they had was the move was about FTT and Alameda's
25 specific assets so the hedges don't really work as well as they

1 could. But that statement is accurate.

2 "Given the tightening in the crypto credit space this
3 year we've returned most of our loans by now." And they had.
4 They had paid back the lenders. So that statement on
5 November 6th by Caroline, or Caroline working with Sam, doesn't
6 advance the government's case. It doesn't move the needle at
7 all.

8 And let's look at the next slide, 32.

9 This is right after CZ makes—go back. Go back to the
10 other one. This is right after CZ makes the offer to buy—sell
11 his FTT at \$22. Caroline writes—and she said she consulted
12 with Sam and others on that, and that's right—"CZ, if you're
13 looking to minimize the market impact on your FTT sales,
14 Alameda will happily buy it all from you today at \$22" per
15 token. That's an accurate statement. \$22 was a fair market
16 price. It was the six-month low. You heard that that from
17 Sam. Sam believed that they had the wherewithal to buy the
18 tokens if they needed to.

19 Now I think there was some concern by Sam and Caroline
20 that maybe CZ wasn't really selling, he was just doing this to
21 hurt FTT—FTX. Maybe he was, maybe he wasn't, but this
22 statement in response was accurate.

23 If we could go to the next one.

24 And I'm going to go out on a limb here. I think this
25 is the government's favorite piece of evidence. I don't think

1 there's a witness they haven't showed this to more than one
2 time. And they used it again and again in their
3 opening—excuse me—in their summation. But let's talk about
4 what really happens here. This is November 7th in the morning.
5 Sam tweets, "A competitor is trying to go after us with false
6 rumors." He believes that. That's CZ, Binance. Sam believes
7 they are going after us with false rumors. And then he says,
8 "FTX is fine. Assets are fine." And he told you why he felt
9 he could write that. And it's the same thing we've been
10 discussing. As of the morning of November 7th, from a
11 liquidity point of view, Sam believed that Alameda had assets
12 on and off the exchange that could address the liquidity issue
13 and that FTX also had assets that could address the issue.

14 And here's the critical companion to this, the part
15 that the government didn't ask any of its witnesses, even
16 though they showed this slide to all of them. By the next day,
17 by November 8th, the price of FTT—remember, that's what's
18 causing the specific run, FTT is plummeting. Because of all
19 the things that are happening, the price of FTT has dropped,
20 Sam told you, to all the way down to close to zero, \$5 a token.
21 What does that mean? It means assets are not fine. So what
22 does he do? He takes the tweet down. And this was
23 corroborated by the stipulation we read to you showing that in
24 fact on November 8th, this tweet was taken down. So again, if
25 all he's doing this week is wheeling and dealing like a

1 fraudster, why would he do that? Why wouldn't he put up an
2 even more outrageous tweet? He wouldn't, because he's reacting
3 in realtime as events are unfolding, and once he sees that
4 because of what's happened to FTT, I can't say this anymore, he
5 takes it down.

6 The other thing that happens during that week is—if
7 we can call up the next slide

8 —is the following: And let me just set the stage for
9 this. We've had a lot of testimony from all the witnesses.
10 Maybe this is the second favorite topic, after the last slide,
11 about deletion, and auto-deletion, and the government said,
12 Aha, you know how we know Sam's a fraudster? You know how we
13 know he's nefarious? Is because on a few occasions, he deleted
14 Signal messages 'cause he was trying to hide evidence. And
15 what Sam told you was in fact, FTX, like a lot of companies,
16 had a data retention policy, or data protection policy, and his
17 understanding of it was it created three categories. One were
18 messages you had to preserve, things that you might show to
19 regulators, for example; the second category is things you had
20 to destroy, things like people's Social Security information,
21 personal data; and the third category was sort of everything
22 else, which, as Sam understood it, allowed the person who was
23 dealing with the chat to set the delete or not as they saw fit.
24 And even with all that—and so over time, Sam and others would
25 delete certain messages.

1 And even with all that, here we are in November, the
2 week of November 11th, the worst week in the history of the
3 company, and what does Sam do in the three chats called out?
4 The first one is Hashtag Organization. Its participants are
5 him, Nishad, Gary, and Caroline. He turns off auto-deletion,
6 on November 9th. The next one are messages just between him
7 and Caroline. On November 10th, he turns it off. And again,
8 him and Gary, he turns it off. We submit this is the opposite
9 of someone who was running a fraudulent scheme would do.

10 Your Honor, we may have hit a natural breaking point.

11 THE COURT: You mean for the day?

12 MR. COHEN: Well, I have a lot more to do, so—

13 THE COURT: Sidebar, please.

14 MR. COHEN: Sure.

15 (At the sidebar)

16 THE COURT: If you want to break, we'll take a break.

17 MR. COHEN: I'm just concerned, your Honor, it's been
18 a very long day, and I'm concerned that the jury is not going
19 to be paying attention as we get to 5:30, 6:30.

20 THE COURT: Do you have a view?

21 MS. SASSOON: No objection.

22 THE COURT: We'll go on.

23 MR. COHEN: Can we take a break, your Honor?

24 THE COURT: Yes, sure.

25 (In open court)

1 THE COURT: We'll take a break, but I'm told we should
2 finish by 6 or 6:30, and unless somebody has a serious problem
3 with that, which you'll let me know by a note when you come
4 back from the break, I'd like to go on, but if there's a
5 serious problem, I won't. So we'll take a 15-minute break.

6 (Recess)

7 (Continued on next page)

1 THE COURT: The jury was given an opportunity to make
2 calls to enable them to stay, and we are going to continue; not
3 indefinitely, but continue.

4 Let's bring them in.

5 MR. COHEN: Thank you, your Honor.

6 THE COURT: I think it is in everyone's interest to
7 get the case to the jury.

8 MR. COHEN: I understand, your Honor.

9 (Jury present)

10 THE COURT: Defendant and the jurors all are present.

11 Ladies and gentlemen, thank you so much for
12 accommodating this later-than-usual sitting this evening. We
13 are simply trying to complete the matter in an appropriate way.

14 You may continue.

15 MR. COHEN: Thank you, your Honor.

16 Again, thank you, everybody, for staying. We really
17 appreciate it. This obviously could not be more important to
18 me and my client. Thank you.

19 When we broke, I was just finishing talking about the
20 period that ended in November 2022. There is one last piece I
21 wanted to cover quickly that goes into December.

22 The government, in its summation, talked about Sam's
23 talking to journalists in November and December, and the
24 government's theory apparently was this is yet another example
25 of Sam the criminal mastermind.

1 And we submit that when you think of it with your
2 real-world experience, their theory makes no sense. He decided
3 to speak with something like 50 journalists in November and
4 December. He did that even though he had no access to his
5 records, not even to his email, and even though, as with Good
6 Morning America, he didn't know what he would be asked. And
7 the notion that he was somehow going to navigate 50 interviews
8 as part of an elaborate coverup just doesn't make any sense,
9 and we submit you shouldn't put any weight on it.

10 The last piece from this period is the testimony you
11 heard that the government elicited from Gary Wang about the
12 Bahamas in the period right after November 11. And the
13 testimony and certainly the implication from the government is
14 that not only was Sam running this criminal enterprise for
15 three years, not only was he along the way lying to Congress,
16 not only was he, I guess, lying to the media to create a
17 coverup, in his last vengeful act he was also trying to curry
18 favor with the government of the Bahamas so that he could keep
19 control of FTX, even after the bankruptcy. That's the theory.

20 The evidence, of course, came nowhere close to showing
21 that. In fact, it showed quite the opposite.

22 I just want to focus on two pieces for you, ladies and
23 gentlemen, quickly. First was GX-248, which we looked at
24 yesterday, both -- two days ago, both on Sam's direct and --
25 his cross-examination and his redirect, and that document is a

1 series of emails between Ryan Pinder, who was the Attorney
2 General of the Bahamas, and Sam and others getting into what
3 had happened with FTX, what was going to happen going forward.

4 And the government, in its examination of Sam, read
5 only one part of the same paragraph, and they suggested that in
6 that paragraph what Sam was doing was opening up withdrawals
7 from FTX only for customers who were based in the Bahamas as a
8 way to get favor with the Bahamian government. They left out
9 the very next sentence. You can see it here, the bottom
10 paragraph, in which we brought up with Sam in which he goes on
11 to say: It is your call whether you want us to do this, but we
12 are more than happy to and would consider it, at the very
13 least, of our duty to the country, and we could open it up
14 immediately if you reply saying you want us to.

15 What's happening there? When you live in a country
16 and the Attorney General reaches out to you, you better return
17 the call. You better respond to the email. And Sam believed,
18 and he shows he is unclear, that, in part, this might be what
19 the government of the Bahamas wanted him to do. If they wanted
20 him to do it, he was going to do it.

21 We can take that down.

22 The second piece that they elicited from Gary, and the
23 government claimed this again showed nefarious conduct,
24 involved Sam's interview with the SCB, which was the securities
25 commission of the Bahamas, and the decision after that to

1 transfer certain assets to the SCB. Again, that was portrayed
2 to us as, you know, yet again Sam currying favor with the
3 Bahamas or somehow trying to control the process. But, again,
4 that's not what the record showed.

5 Remember our first witness on defense was Ms. Krystal
6 Rolle, the very distinguished Bahamas attorney who flew all the
7 way here to testify for you. She told you she is now a King's
8 Counsel. She used to be a Queen's Counsel. There is 40 of
9 them in the Bahamas. She is one of the most distinguished
10 attorneys in the Bahamas, and she told you, there was no
11 fooling around. Sam was ordered to go to this meeting at the
12 SCB. He went there with her. They met with the SCB and its
13 leadership. They also met with something called the joint
14 provisional liquidators. And then they went from that meeting
15 to FTX offices and, under an order, transferred the funds.
16 Nothing nefarious about that.

17 Let me turn to the next part of my presentation. And
18 just to orient you, I am now going to make -- talk a bit about
19 the government's case and then just make some concluding
20 remarks. Again, thank you for bearing with me.

21 Let me talk about the government's case. I want to
22 talk about three things: Their cooperating witnesses, the
23 specific counts relating to customers, lenders, and investors,
24 and how to think about the testimony of Professor Easton and
25 Agent Owens who you heard from.

1 Let me talk about their cooperating witnesses. It's
2 really, really interesting because in a three-and-a-half-hour
3 summation the government didn't mention their cooperation
4 agreements at all. They didn't mention at all that they might
5 have some incentive to testify in a certain way or not.

6 Let me talk about how to think about them. Now, we
7 expect the Court will give you an instruction on how to weigh
8 evidence and, as always, it's Judge Kaplan's word that
9 controls. But we ask that as you deliberate you keep in mind a
10 few things when you think of what the cooperating witnesses
11 said, and here I'm talking about Gary, Nishad, and Caroline,
12 who had cooperation agreements, and I'm also talking about Adam
13 Yedidia, who had an immunity agreement, and Can Sun, the
14 attorney who had a nonprosecution agreement. Let me suggest a
15 way to think about those witnesses and their testimony as you
16 deliberate.

17 First, of course, is what matters is Sam's state of
18 mind. Counting up the number of people who did or didn't
19 testify against him doesn't matter. What matters is what Sam
20 believed in good faith at the time. As we mentioned when we
21 started in an opening, we didn't have to present any evidence
22 at all, so the number of witnesses presented by each side
23 doesn't matter.

24 Second, if you examine their testimony carefully, as
25 we know you will, you will see that when you view it against

1 your real-world experience, you cannot rely on it to carry the
2 government's burden of proof as to Sam. Think about the three
3 main cooperating witnesses, what they said about when they
4 realized there was a problem with Alameda borrowing FTX's
5 assets. You heard different answers from them. They were even
6 inconsistent among themselves. Gary claimed he became aware of
7 the issue as far as back as 2019 or 2020, when he happened to
8 be sitting next to Sam at Alameda, and overheard an Alameda
9 trader mentioning Alameda having a negative account balance at
10 FTX. By the way, what did he do about it at the time?

11 Nothing.

12 Nishad, on the other hand, claimed he never knew about
13 the size of Alameda's borrows and the possible impact of the
14 fiat@ liability until June of 2022, and he didn't think there
15 was a problem with what was happening until September. Now,
16 Nishad worked right alongside Gary for years, and you heard the
17 government tell you how Nishad and Gary were the engines behind
18 setting up the secret codes and the code base, yet they gave
19 you conflicting accounts of what happened there.

20 Then there was Caroline, who fell somewhere in
21 between. She testified she was aware of Alameda borrowing its
22 funds using its line of credit sometime in 2020, but, again,
23 didn't do anything about it, but she didn't consider there to
24 be a problem until June 2022, when we had the bug sequence that
25 we talked to you about.

1 The three of them are working side by side with each
2 other and with Sam, their friend, for the entire time, but they
3 claim they learned this information at different times and in
4 different ways and that they did essentially nothing about it
5 until November 2022. It doesn't make sense if you thought at
6 the time -- if you thought for years you were doing something
7 wrong that you wouldn't take action.

8 Another thing to consider when you think about the
9 number of witnesses, and if we can put up the next slide.

10 A lot of the witnesses weren't actually additive
11 witnesses. They were just repeating things they had heard from
12 some other witness. You will recall you heard testimony from
13 Caroline about the all-hands meeting in which she said there
14 was the fiat liability and that was causing the problem. You
15 then heard from Adam Yedidia that he resigned when he heard
16 about what happened at the all-hands meeting, not that he was
17 there, not that he even spoke to someone that was there, but he
18 spoke to Leila Clark, who spoke to someone who was there and,
19 based on that, he resigned. Think about that for a moment.

20 Adam was a developer. Adam could access the code. Adam could
21 work on the bug fix. And he tells you that he based everything
22 he was doing, he based his conclusion that Sam had done wrong
23 on something he heard from someone who heard from someone who
24 had been at the meeting. That doesn't make sense.

25 Same thing with Christian Drappi, the individual with

1 whom the recording was played with. He was also a developer
2 like Adam. He could have verified or not verified what he was
3 being told, but he just acted on it.

4 Nishad told you, at the bottom of the chart, that he
5 based his conclusion on what was happening with the liability
6 on a conversation with Caroline in September and then Can told
7 you he based it on Nishad.

8 There is a lot of telephone going on here and the
9 point is it's not four, five, six witnesses giving you
10 firsthand knowledge. It's four or five witnesses just
11 repeating what they have heard down the chain.

12 You can take that down.

13 Turning back to the three cooperating witnesses, Gary,
14 Caroline, and Nishad, a few things you should consider when you
15 evaluate their testimony, which you should do very carefully.

16 Let's put up the next slide.

17 You will recall there was testimony about their
18 compensation. Going into November 2022, these were extremely
19 wealthy people who had made significant salary, significant
20 cash bonuses, and certainly, based on the equity value, were
21 each billionaires. You should keep that in mind as you
22 consider their testimony.

23 Let's go through now what each of them did.

24 If you can pull up the next slide. Actually, take
25 that down for a moment.

1 Again, Gary tells you that he first heard of a problem
2 in 2019 in the trader conversation, but he didn't do anything
3 about it, that between 2019 and 2022, he becomes a billionaire.
4 And certainly had he thought there was anything wrong going on,
5 he could have cashed out, he could have resigned, he could have
6 left, he could have contacted an attorney and notified the
7 authorities. He doesn't do any of that.

8 Same thing with Caroline. She goes through the same
9 sequence. She tells you she first learns of the problem in
10 June 2022, but even after that she doesn't resign, she doesn't
11 leave the company, she doesn't hire any advisers. Why?
12 Because they don't think they are doing anything wrong.

13 Then there is Nishad. He testified that they were
14 doing wrong in September, and he had, shall we say, an
15 interesting view about what was right and wrong at that time.
16 He said what was wrong in September was, quote, spending
17 dollars. Spending anything after September was necessarily
18 digging the customer deficit hole deeper. That's Nishad at
19 page 416. But did he really believe that? Just like the
20 others, he didn't resign, he didn't leave, he didn't seek an
21 attorney.

22 And, more than that, remember Nishad admitted on
23 cross-examination that, in October, he borrowed \$3.7 million
24 off the FTX exchange to buy a house for himself and his
25 friends. If he actually thought what they were doing was

1 wrong, would he have bought a house with funds borrowed from
2 the exchange?

3 Now, if you can put up the next slide.

4 This just returns to a theme we talked about in
5 opening, the cooperating witnesses then and now. Again, it
6 just summarizes the points that I have just made.

7 Think about it. Five of the seven counts that Sam is
8 charged with are from being part of a conspiracy, presumably
9 with one or more of these people. In light of what we have
10 just discussed, how could he have been in a conspiracy with any
11 of them?

12 We can take that down.

13 Now let's talk about what happens with the three of
14 them during that very, very fateful week of November or ten
15 days or 11 days, November 11, 1 to 11. No question, we can all
16 agree, this is a very chaotic time. This is a very stressful
17 time. The companies are on the verge, by the end, of going
18 bankrupt, and they do go bankrupt.

19 And what happens? As that week unfolds, what the
20 cooperating witnesses do, as FTX's situation become more and
21 more desperate, as regulators pop up in the Bahamas and
22 elsewhere, as there is chaos at the door, something subtle
23 happens. Blame is shifted to Sam. They are doing what they
24 need to do to get out from under.

25 How do we know that? We know that from their own

1 testimony, both on direct and cross-examination. Remember the
2 all-hands call we just talked about. At a certain point in the
3 call, and this is the part the government played for you,
4 Caroline is asked what happened and who made the decisions.
5 Now, to hear the government tell it in summation, certainly
6 Caroline made the decisions. She was part of it. But how does
7 she respond to this group of people who, by definition, are not
8 in the conspiracy? Quote: Sam, I guess.

9 And you recall we saw a Signal conversation with
10 Nishad and Sam on November 6 which the government played for
11 you today where Nishad told Sam, one thing that would seriously
12 help me is if I didn't have any debts. And to erase his debts,
13 on November 6, Nishad proposes a fake transaction that's going
14 to be backdated that would net out his loans.

15 And a fair reading of this tweet -- and the testimony
16 is at 1459 through 1461 -- fair reading of this tweet is as
17 things are unfolding and things are getting tighter and tighter
18 and tighter, Nishad to starting to something focus on himself,
19 how to get out from under. Sam told you -- and it was not just
20 Sam; others testified to this -- he regarded Nishad as suicidal
21 during this period.

22 So he responds, sure, we can probably do that, but he
23 told you on his testimony, he's not planning to do a backdated
24 transaction with Nishad. He is just agreeing because he
25 doesn't want his friend to do anything drastic. What his

1 friend is doing is focusing on himself.

2 Two days later, on November 8, Sam -- Nishad sends a
3 chat to Sam which the government actually showed you today, I
4 was surprised, that says, quote, this is wildly selfish of me,
5 but they may need to know that it wasn't a ton of people
6 orchestrating it. The government suggests that the it is the
7 crime here, but a fair reading is the it is problem, the mess,
8 the disaster going on.

9 To put this in context, Nishad sends this same chat,
10 and within a few days he goes from buying a \$3.7 million home
11 for himself with funds off of the FTX exchange to sending this
12 kind of chat.

13 What about Gary? Gary goes from the meeting with the
14 regulators at the SCB in the Bahamas, where he certainly knows
15 things are up, the wind is up to his lawyers from the U.S.
16 coming to get him in the Bahamas and going back to the U.S.

17 The point here is not that Gary, Nishad, and Caroline
18 are bad people. We haven't said that at all during this case.
19 We actually have empathy for the situation they found
20 themselves in and what they felt they needed to do. But they
21 were under pressure to get out from under, and that meant
22 pointing at Sam.

23 Sam, of course, never tried to do those things.
24 Remember that these witnesses ultimately entered into
25 cooperation agreements with the government.

1 We can pull up the next slide.

2 They entered into a cooperation agreement, and they
3 agreed to plead guilty to the various charges that expose them
4 to serious, serious jail time. And they were asked about that
5 both on direct and on cross-examination. And at first we got
6 sort of a boilerplate answer, I'm just here to testify. I am
7 just here to tell the truth. I have no expectation about the
8 sentence I might get. I am just here to tell what happened.

9 But then Gary slipped, and that's at page 477, and he
10 said: You know, ideally, I don't want any jail time. That's
11 what this was about. And they are not going to get it. They
12 are not going to get the kind of cooperation agreement they
13 want, the kind of sentence reduction motion by saying, you
14 know, at the time we really didn't think anything was wrong.
15 They are not going to get it by saying, you know, we all made
16 business decisions, we made mistakes, we did some dumb things,
17 and they turned out wrong. They are not going to get it that
18 way. And they are not going to get it by saying, you know, Sam
19 was our friend. He was a good guy. We built businesses
20 together. He worked really hard, and at the end he was trying
21 to save FTX and customers. So they did what they had to do.

22 And in that regard think about this. Caroline was up
23 front with you in her direct and cross that she had really
24 nothing to do with investors. Her business as CEO of Alameda
25 was to work with outside lenders and to run the company and,

1 yet, she pleaded guilty to one of the counts, committing fraud
2 with respect to investors.

3 Nishad told you in his direct and cross that he didn't
4 feel he had done anything wrong with respect to making
5 political donations, and he originally thought that the
6 donations were properly characterized. But he pleaded guilty
7 to a campaign finance charge among the counts he pleaded to.

8 Again, we don't fault them. They did what they had to
9 do under the circumstances, but it means you should consider
10 their testimony overall very carefully. Someone who will plead
11 guilty to something they are unsure of or didn't even think
12 they did is someone whose testimony you should think about very
13 carefully.

14 As for Adam Yedidia, he received an immunity
15 agreement, even though he told you he didn't think he did
16 anything wrong. It seems inconsistent.

17 And Can Sun, the attorney, told you he received a
18 nonprosecution agreement two days before he testified.

19 Now, let me move on and talk about some of the
20 specific counts in the indictment and customers, lenders, and
21 investors.

22 Just to go back to where I started, Sam's good faith
23 is a defense to all the counts in the indictment. If you find
24 he acted in good faith, you must find him not guilty on all
25 seven counts. But there are also specific defenses and

1 specific problems with some of the individual charges in the
2 indictment as well, and I want to point them out to you now.

3 If we could call up the next slide.

4 This is Count One, wire fraud on customers. Again,
5 these are not controlling. What controls as to the elements is
6 what Judge Kaplan will tell you. But as to the customer
7 counts, we ask that you consider the evidence on that. And
8 when you do, we ask that you think about the fact that the
9 government called two customers, and we submit that their
10 testimony did not carry the day.

11 First, you heard from Mr. Julliard, the French person
12 who lives in London who was the very first witness called in
13 the case. Now, he told you he was a commodities trader,
14 sophisticated commodities trader who traded in cocoa. And he
15 admitted on the stand that he agreed to but never reviewed
16 FTX's terms of service, and instead he initially claimed that
17 the reason he put assets on FTX was because of the
18 advertisements FTX had put up. He remembered the one involving
19 Gisele. He didn't remember her last name. And he thought
20 based on these ads there must be good financials behind the
21 company.

22 Does that testimony make sense to you, is that someone
23 who is a cocoa commodities trader would actually act in the
24 real world? It isn't. And I don't think you can give his
25 testimony any weight in considering the counts against

1 customers.

2 The other customer we heard from was Mr. Morad. He
3 testified that he was very familiar with crypto, that he had
4 accounts on many, many exchanges, and he had traded on many of
5 them. Of course, like all the witnesses, except Can Sun, he
6 never read the terms of service, and he claimed to make his
7 investment decisions based on Sam's tweets. Does that make
8 sense to you? Again, we don't think that moves the needle at
9 all, so we suggest that that lack of evidence means that there
10 is an additional problem with respect to Count One and Count
11 Two. Count One is wire fraud on customers and Count Two is
12 conspiracy to commit wire fraud on customers.

13 Now let's turn to Count Three and Four, which are the
14 conspiracy to commit wire fraud claims against lenders, if we
15 can go to the next slide.

16 Now, you heard testimony from Caroline about
17 interaction with lenders, and I am not going to redo that. You
18 heard our view on why that doesn't carry the day as to proving
19 Sam acted with criminal intent.

20 And the only lender the government called was Zac
21 Prince, the CEO of BlockFi, and we submit that his testimony
22 also doesn't move the needle on the lender counts. He told
23 you, I went over with him that BlockFi had done a credit memo
24 on whether to make a loan to Alameda. And in that credit memo
25 his credit team had received everything they asked for, and

1 they were fully aware of all the factors they thought were
2 material or important to them.

3 For example, one issue we have talked about in this
4 case a lot was that one of Alameda's main sources of collateral
5 was FTT, the token that FTX had backed. And sure enough
6 Mr. Prince told you, yeah, his team knew that. We analyzed the
7 FTT. We insisted that because FTT was illiquid, we would be
8 overcollateralized in FTT. There was nothing misleading to him
9 when they made the loans, loans that were then paid back in
10 full. As I mentioned before, Mr. Prince also then had --
11 during the crisis he had conversations directly with Sam in
12 which he was asking Sam if FTX would invest or loan money to
13 BlockFi, which did happen.

14 One last piece on the lenders, and this actually
15 applies to the investors and the customers. Because the
16 directive doesn't the really move the needle, the government
17 does the following. They ask the investors and lenders some
18 variant of the following question. If I told you that Sam had
19 stolen customer assets, would that have been important for you
20 to know? Who is going to say no to that? But that's what was
21 happening in real time. That is the conclusion the government
22 has reached after bringing its case. That's not a fair
23 analysis of materiality.

24 Speaking of the investors, the government called two
25 investors: Matt Huang, who was from a company called Paradigm;

1 and I am going to mispronounce this, but Mr. Robert Boroujerdi,
2 who was from Third Point.

3 And here are some important points about the investor
4 count, which is Count Five related to securities fraud. They
5 each made their investments by January of 2022. Remember the
6 chart we showed you about all the different offerings. So they
7 made their investments before the events of May -- June through
8 November 2022, before Sam did all the horrible things that the
9 government says he did. If they made their investments before
10 that, how could his later conduct have been material to them?
11 It couldn't have been. Again, they ask the default question.
12 If I told you that to prove my case, would that be important to
13 you? OK. That's not proof.

14 On the investors as well, we had the piece where we
15 talked about the call with Apollo at the end of November or the
16 first week of November. A few facts there to emphasize. They
17 don't show support for the investor count. This we received
18 from Can Sun.

19 First of all, Can admitted that in reaching out to
20 Apollo, Sam sent them the balance sheet that contained the
21 fiat@ liability, so nothing was kept from them. And then Sam
22 spoke with Can. Can went over the discussion with you in which
23 he said you can't use the borrow lending order book as a way of
24 explaining what had happened. Sam said yup. And Can said they
25 refused looking into what margin assets in general might have

1 covered that. They never got to it. But, more importantly,
2 Sam did have the call with Apollo and didn't say any of those
3 things.

4 And when you think about that sequence, think about
5 this. Apollo ended up not investing and, more to the point,
6 the government didn't bring Apollo before you to testify that
7 Sam had said anything different.

8 They also didn't bring before you Ramnik Arora, who
9 was deeply involved in all the investment decisions. The
10 government may say, well, the defense could have brought them
11 in too if they wanted you to hear from them, but, you know, we
12 don't have a burden. We don't have to call any witnesses. So
13 consider that.

14 Because their proof doesn't get them there on the
15 investor counts, remember none of the cooperating witnesses,
16 Gary, Nishad, or Caroline, had anything to do with investors,
17 because they didn't call Ramnik or anyone else because the two
18 individual investors I mentioned don't get them there.

19 We had these elaborate convoluted stories about the
20 Ecoserum sequence and the MobileCoin sequence. What is that
21 all about? It trying to back into some convoluted way to say
22 that Sam somehow did something with Nishad that would have
23 misled investors.

24 And we submit the story on Ecoserum is convoluted and
25 inconsistent, and Sam told you, look, I didn't tell Nishad to

1 backdate anything with regard to ECO Serum. The fact that he
2 signed an agreement that others prepared for him doesn't move
3 the needle.

4 And on MobileCoin, which is, again, another effort to
5 backdoor into some sort of proof of the investor count, Sam
6 told you, yeah, there was a loss on FTX and I felt, I Sam, felt
7 I had mishandled it. So I moved it to Alameda where I would
8 personally take most of the loss. That seems like trying to
9 help investors, not hurt them.

10 Let me briefly talk about the money laundering count.
11 Quickly, let me go to Count Six. Excuse me.

12 Count Six. Count Six is the conspiracy to commit
13 commodities fraud count and that's basically the Count Five
14 securities fraud count repackaged as a commodities fraud count.
15 To the extent, for the reasons I have just said, the securities
16 fraud count fails, this one must fail as well.

17 Let me turn finally, to the money laundering count,
18 which is the last count. I want to talk about the two types of
19 money laundering that the government has alleged here and how
20 the proof that you actually receive doesn't support it. The
21 first one is called concealment money laundering. That's where
22 someone is making -- has illicit sources of funds and seeks to
23 conceal them.

24 When you think about the government's theory here, it
25 makes no sense. They say that the way Sam and others were

1 seeking to conceal assets they have taken from Alameda was by
2 making political donations with them. Think about that. Why
3 would someone conspire to steal funds and then try to conceal
4 them by making political donations, which are some of the most
5 regulated publicized and scrutinized forms of spending there
6 is? Why would they go through the further trouble of hiring
7 political consultants and give them access to the internal
8 workings of FTX in a chat called Donation Processing, which is
9 what happened here, if the entire purpose was to secretly
10 launder money? The government's theory doesn't make any sense.

11 The same goes for its second theory, money laundering
12 above a monetary threshold. The theory essentially is, the way
13 the government has presented it, that basically any transaction
14 involving Alameda funds that may have been connected to FTX
15 customer funds, however they come up with the connection, is
16 per se money laundering, and you will hear the instruction, but
17 we submit that that theory goes too far and should be rejected.

18 Last in this section let me talk briefly about
19 Professor Easton and Agent Owens, who the government presented.

20 Now, the government spent a lot of time with Professor
21 Easton, and we saw chart after chart after chart after chart,
22 and you are invited at the end of the government's summation to
23 look at those charts again. They really give you a suggested
24 way to think of Professor Easton's testimony.

25 At a very high level, if you find that Sam acted in

1 good faith and in good faith believed that he could spend or
2 FTX or Alameda could spend the funds it did when it did, then
3 really Professor Easton is beside the point. All he did was
4 trace outflow of funds.

5 The question is not what the flows were: Did it go to
6 account 1, account 2, account 3, or ABC? The question is why?
7 Why was Sam doing it and what did he believe he was doing? On
8 that basis alone, you need not -- you're welcome to, but you
9 need not go through all of these charts. Because if you find,
10 as we submit you should, that Sam acted in good faith,
11 Professor Easton is besides the point. He is just simply
12 taking the government's theory, assuming it's true, which, of
13 course, is what is up to you to determine, and then tracing out
14 those funds.

15 We also think, and again you may not need to get to it
16 at this level, that there were some things in his testimony
17 that were not reliable. He said he knew the importance of
18 net-asset valuation, but yet when he did his analysis, his flow
19 of funds, he didn't look at that when it came to Alameda. He
20 didn't look at Alameda's assets that were held off the exchange
21 or FTX or other assets.

22 He also told you in some of his analysis -- by the
23 way, that's at transcript 1802 and 1804. He also told you in
24 some parts of his analysis that he concluded transfers must
25 have come from customer funds because they were, quote, in the

1 immediate vicinity of customer funds. That's at 1750. That
2 doesn't sound very scientific to me and not something to rely
3 on.

4 Finally, you heard from Agent Owens of the FBI, who
5 did a flow-of-funds analysis relating to political donations.
6 Again, the easiest way to think about her is from a high-level
7 point of view.

8 If you conclude, as we submit you should, that Sam
9 acted in good faith, including in making political donations,
10 then she traced out the funds, whether they went to account A
11 or B or C, is beside the point.

12 Like Professor Easton, if you want to get into the
13 specifics, some of her analysis was not reliable. She told you
14 she used the last in, first out LIFO method, but then we showed
15 her a major expenditure that she had to admit on the stand
16 actually didn't follow that method, so a reason to be skeptical
17 there.

18 That brings me to my concluding remarks finally. We
19 want to thank you again for sitting with us through this trial.
20 You have done a great job keeping an open mind and listening
21 carefully and intently, and we thank you for giving up the time
22 in your personal lives to hear this case. It is important to
23 us.

24 Now, after I speak, tomorrow the government gets to
25 speak again. It's called a rebuttal summation. As I

1 mentioned, they get to do that because they get two because
2 they have the burden of proof and it never shifts.

3 But, even so, the defense can still be heard. What do
4 I mean by that? You can speak for us. When you hear something
5 in the government's rebuttal, and as you evaluate it later in
6 the jury room, please consider they are making points that we
7 might make, asking questions we would ask.

8 For example, if the government says, well, once the
9 fiat liability was discovered, Sam should not have come to a
10 different view about Alameda's liquidity and Gary, Caroline
11 and, Nishad. Please ask, why not? Wasn't this in the end a
12 difference in business judgment? If the government says in
13 rebuttal, well, please disregard what the defense told you
14 about how to think about the cooperating witnesses and their
15 agreements, about all the real-world pressures on them, about
16 the shift in what they said between then and now, please ask,
17 why should we do that? Shouldn't we be very skeptical of their
18 testimony and not accept it due to those concerns and so on?

19 As you listen to the rebuttal summation and as you go
20 into the jury room we ask you, please, to think about the
21 questions we would ask and consider them as you go through the
22 evidence.

23 Because in the end we submit that Sam did his best to
24 start and operate two companies that became multibillion dollar
25 businesses in a new industry. Some decisions and judgments

1 turned out very well. FTX wound up with 6 million users,
2 managed billions and billions of dollars of trade. Some
3 decisions turned out poorly, especially without hedges.
4 Holding long-term assets against short-term liabilities was a
5 decision that turned out poorly. It led to FTX and Alameda's
6 liquidity gap and ultimately to the bankruptcy filings. As I
7 have said many times now, business decisions made in good faith
8 are not grounds to convict.

9 We submit that when Sam testified before you, he told
10 you the truth, the messy truth, that in the real world
11 miscommunications happen, mistakes happen, delays happen. And
12 the borrowing happening in the case of Alameda here, in the
13 case of Alameda depositing or withdrawing hundreds of millions
14 of dollars a day, in a process that swept in customer fiat
15 assets, there were mistakes, there were failures of corporate
16 controls in risk management, and there was bad judgment. That
17 does not constitute a crime.

18 This has been an extraordinary journey. In Sam's life
19 he has gone through more than most do in a lifetime. One day
20 he's a college student. Then he's in an apartment with his
21 close friends starting a crypto company. They are working
22 around the clock, moving all over the world. The company is
23 becoming amazingly innovative and successful, worth billions.
24 Then there is a market crash and then this.

25 And here we are, finally before you, in your hands,

1 the jury, so I'll speak last for Sam, for my client. Consider
2 the evidence in light of your real-world experience. We submit
3 you will find that Sam acted in good faith throughout, that he
4 made the best business decisions he could at every stage. He
5 didn't want to hurt anyone, far from it. He didn't want to
6 defraud anyone and he didn't. He didn't intend to defraud
7 anyone.

8 So, with respect, the greatest of respect, we ask that
9 when you deliberate, you find him not guilty on all counts.

10 Thank you.

11 THE COURT: Thank you.

12 Ladies and gentlemen, thank you for staying. We will
13 tomorrow morning hear any rebuttal argument by the government,
14 and I will charge you and you will get the case.

15 I should add, in full disclosure, I am informed during
16 the day -- and, again, I'm not commenting on how long this
17 should take or how quickly you should be done one way or the
18 other -- if we do stay late enough to get something to eat,
19 it's pizza. It didn't used to be that way. I'm sorry, but
20 that's what it is.

21 (Adjourned to November 2, 2023, at 9:30 a.m.)
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